



2005 Indiana Election Legislation Summary

Prepared by the Indiana Election Division

This document summarizes the election-related legislation that passed the Indiana General Assembly and became law in 2005. Bills may be obtained by contacting the Legislative Information Center at 200 West Washington Street, Room 230, Indianapolis, Indiana 46204-2731; (317) 232-9856, or by downloading documents from the Access Indiana homepage at www.in.gov/legislative.

This document is intended to serve as an overview of information concerning Indiana election laws. Although the Election Division takes every effort to ensure the accuracy of the information in this document, **where your legal rights are involved, do not rely on this document. Instead, review the law yourself or consult with your attorney.**

The 2005 Regular Session of the Indiana General Assembly enacted the following election-related bills:

Public Law 58-2005 (Senate Enrolled Act 14): Ballot format
Public Law 81-2005 (Senate Enrolled Act 482): Various voter registration matters
Public Law 88-2005 (Senate Enrolled Act 308): Uniform dates for terms of county constitutional officers
Public Law 103-2005 (Senate Enrolled Act 15): Absentee ballots
Public Law 109-2005 (Senate Enrolled Act 483): Photo identification
Public Law 111-2005 (Senate Enrolled Act 512): City election and annexations
Public Law 113-2005 (Senate Enrolled Act 18): Removal from office after felony conviction
Public Law 119-2005 (Senate Enrolled Act 179): Office vacancies caused by death
Public Law 198-2005 (Senate Enrolled Act 419): Military and overseas voters; enhanced access to elections
Public Law 230-2005 (Senate Enrolled Act 341): Various election law matters
Public Law 221-2005 (House Enrolled Act 1407): Voting systems and other election law matters

The following bills made technical (or non-election related) amendments to Indiana election statutes:

Public Law 1-2005 (House Enrolled Act 1288): Recodification of IC 20 (education law)
Public Law 2-2005 (House Enrolled Act 1398): Technical corrections
Public Law 42-2005 (House Enrolled Act 1432): Utility withdrawal from state jurisdiction
Public Law 237-2005 (House Enrolled Act 1141): Creation of courts
Public Law 246-2005 (House Enrolled Act 1001): State Budget and creation of courts

VOTER REGISTRATION

Responsibility for Voter Registration Records Being Scanned for Statewide Voter Registration List

A county is permitted to provide original voter registration records to the state's contractor for purposes of optically scanning the records for inclusion of information on the statewide voter registration list. If the county voter registration office provides original voter registration records to the state contractor, the contractor shall take all necessary and prudent steps to safeguard and preserve the records and promptly return them when scanning is complete. The county, county voter registration office, the circuit court clerk, any member of the county board of registration, and

any employee of the county voter registration office shall not be liable for any loss or damage that occurs to the records during the time the state's contractor has custody of the records. The state's contractor must assume full liability for any loss or damage to these records before taking custody from the county voter registration office. (HEA 1407 § 149; Effective date: May 11, 2005; Citations affected: noncode)

Statewide Voter Registration System

The Secretary of State and the Election Division are the owners of all property that comprises the statewide voter registration system. This provision seeks to ensure that the maintenance and administration of the system ("the list") is done in conformity with federal and state law, since these state officials and offices are responsible for these tasks under federal law (the Help America Vote Act). Except as expressly provided by state law, the system and each of its components must be used exclusively for voter registration and election administration purposes. (SEA 482 § 11, Effective date: April 25, 2005; Citations affected: 3-7-26.3-4)

"Pending" Voter Registration Applications in County Office

Current law is amended to specify that when a county voter registration office approves an application, and mails an acknowledgement notice to the voter, the applicant is officially a registered voter and added to the voter registration records at the end of 7 days after the card is mailed, unless the acknowledgement notice is returned by the Postal Service within the 7 day period. Under current law, no specific number of days is set forth for the county to hold the application in pending status to see whether the acknowledgement notice will be returned.

When the statewide voter registration system begins operation, the county voter registration office shall indicate in the system during these 7 days that the application is "pending". If the acknowledgement notice is not returned at the end of the 7 day period, the county must change the record to indicate that the applicant is now a registered voter.

If the county mails the acknowledgement notice to the voter registration applicant, but the seven day "pending" status expires after the county prints the poll list for the precinct and before election day, the county voter registration office shall prepare a certificate of error to add the voter's name to the poll list, if the applicant would otherwise have been included on that list.

If the county mails the acknowledgement notice to the voter registration applicant, but the seven day "pending" status will expire after election day, the county election board shall notify the inspector of the precinct where the voter resides. The voter, subject to fulfilling the requirements of the provisional ballot law, is entitled to cast a provisional ballot. (SEA 482 § 18; Effective date: January 1, 2006; Citations affected: 3-7-33-5)

Processing "Late" Voter Registration Applications

Current law provides that if a voter registration application is received after the registration deadline before an election, the application cannot be "processed" by the county voter registration office until the first day when registration reopens. When the statewide voter registration system begins operation, and a county voter registration office receives a "late application", the information contained in the late application must be entered into the statewide system when received by the county, but marked as "pending". The county voter registration office must then ensure that a confirmation notice is not mailed to a "late applicant" until registration reopens after the election, and that the name on the "pending" application does not appear on any certified list of voters prepared for the upcoming election. In addition, a county voter registration office may not issue a certificate of error to an individual whose voter registration application is "pending." (SEA 482 § 1, Effective date: January 1, 2006; Citations affected: 3-7-13-12)

Updating Voter Registration Records

Current law permits the county voter registration office to open sealed election records containing poll lists to document that a voter has complied with federal and state law to provide identification documentation for voters that had registered by mail and had not previously voted *in the county*. Although this updating of records will continue after the statewide voter registration system is implemented, identification documentation will be required from voters who register by mail and have not previously voted within the *State of Indiana*. (SEA 341 § 35, Effective date: July 1, 2005; Citations affected: 3-10-1-31.1)

Processing Voter Registration Change of Address Forms

A “registration form” in current law refers to both an initial voter registration application and a form requesting to transfer a current voter’s registration to another address.

The procedures for a county voter registration office to follow if the voter registration transfer does not contain an answer to the age or citizenship questions required under federal law (the Help America Vote Act) are clarified. If a county voter registration office obtains information from a voter by telephone to complete the registration form (as permitted under current law), the county must document the information and process the form. No later than the deadline for preparing the precinct poll lists (10 days before election day) the county voter registration office must certify to the county election board a list of all voter registration applications that remain incomplete despite the efforts of the county office.

(SEA 482 §§ 20 through 24; Effective date: April 25, 2005; Citations affected: 3-7-34-1.7 [new], 3-7-34-2, 3-7-34-3, 3-7-34-4, and 3-7-34-6)

Processing Incomplete “Full Service Agency” Forms

If a county voter registration office receives an incomplete voter registration form from the bureau of motor vehicles (BMV) or a “full service” voter registration agency, the county office must notify the Election Division (“the NVRA official”) on an “expedited basis” (defined by IC 3-5-2-23.2 as within 48 hours) after the county receives the incomplete form.

The Election Division (rather than the county election board) must notify the BMV or other agency that the agency is required to furnish the omitted information on the voter registration application to the county within 48 hours after receiving the notice from the Election Division. (SEA 482 § 25; Effective date: January 1, 2006; Citations affected: 3-7-34-7)

Processing Registration Forms From Other Counties and from the State

If a county voter registration office receives a registration form from a person who resides in another county, the county voter registration office shall forward the registration form to the county where the voter resides on an “expedited basis” (defined by IC 3-5-2-23.2 as within 48 hours) after the county receives the incomplete forms. The county voter registration office can fulfill this requirement by forwarding an optically scanned image of the registration form to the other county voter registration office and by forwarding the original copy to the other county later.

The county voter registration office of the county where the voter resides must process the transferred registration as received before the close of registration if the registration was received by the original county voter registration office (or full service voter registration agency) while voter registration was open. If the original county received a registration by mail then the deadlines that apply to mail-in forms apply. If the registration was not received in a

“timely” manner under this procedure, it is processed by the county voter registration office as a “pending” application in the same manner as other late applications.

If a timely voter registration is received by the correct county after the poll lists have been printed, the county voter registration office is required to issue a certificate of error if the county voter registration office of the correct county approves the application.

The Election Division shall forward voter registration cancellation requests received by the Division to the appropriate county voter registration office on an “expedited basis” after the Election Division receives the cancellation. The Election Division may send an optically scanned image of the cancellation to the county and forward the original copy of the cancellation at a later date.

(SEA 482 §§ 26 through 28; Effective date: January 1, 2006 except as otherwise indicated; Citations affected: 3-7-34-9, 3-7-34-10, and 3-7-34-13 [effective April 25, 2005])

Issuance of Certificates of Error

A county voter registration office may issue a certificate of error at any time after the poll list for the precinct is printed. The certificate must be executed by the head of the county voter registration office (the clerk, or both board members if a separate board exists) and numbered in the method prescribed by the state for entry in the statewide voter registration system. (SEA 482 § 29; Effective date: July 1, 2005; Citations affected: 3-7-48-2)

Information Available From Statewide Voter Registration System

Several provisions in current law regarding the state’s “once a year” compilation of voter registration information (IC 3-7-26) will continue to apply to information in the new statewide voter registration system.

For example, provisions regarding persons who may purchase the list, the content of the list, the cost of the list and the terms of an agreement to purchase the list are carried forward and made applicable to the statewide voter registration file. When the statewide voter registration system becomes operational, the Chief Justice of the Indiana Supreme Court will be entitled to receive a copy of the list for no fee for purposes of state administration of the jury management system. The current law concerning the “once a year” compilation (IC 3-7-26) expires January 1, 2006 when the new statewide voter registration system becomes operational.

Under the new law applicable to the statewide voter registration system, the state is prohibited from providing partial compilation of voter registration information, except as provided by law. Under the statewide voter registration system, the Election Division will be permitted to provide information to voters to confirm voter registration status and provide the location of the polls for the voter’s precinct, and to produce and provide various types of reports required under current law. For example, the statewide voter registration system must track voter list maintenance transactions performed in the system; while these reports can include information regarding individual voter registrations, the reports cannot provide information regarding the date of birth, gender, telephone number, voting history, or registration date of individual voters. The Election Division will also be permitted to produce and provide various types of reports from the statewide voter registration system other than lists of registered voters.

(SEA 482 § 13; Effective date: July 1, 2005; Citations affected: 3-7-26.4 [new chapter])

Voter Registration Services in City and Large Town Offices

The current law requiring that the office of a city clerk or city clerk-treasurer (in any city), or the office of a town clerk-treasurer in a town with a population of 3,500 or more) offer a voter registration form to each person who is applying for service or assistance, record whether the applicant accepted or declined the application, and then forward the

applications and declinations to the county voter registration office is repealed. These city and town offices must make mail-in voter registration forms available to persons in those offices. The voter registration applicant is responsible for delivering completed mail-in voter registrations to the appropriate county voter registration office. (SEA 482 §§ 2, 10, 15, and 35; Effective date: April 25, 2005; Citations affected: 3-7-18-2, 3-7-24-9, 3-7-31-4, and 3-7-20[repealed])

State to Provide Voter Registration Applications by Making Them Available on Website

The Election Division is required to publish a downloadable version of the current registration by mail form on the division's website to fulfill the requirements of federal law (the National Voter Registration Act of 1993). A related provision requiring a person requesting 10,000 or more copies of voter registration applications to submit a plan to the Election Division to review before the Election Division would be required to provide this number of paper copies is repealed. (SEA 482 § 8; Effective date: April 25, 2005; Citation affected: 3-7-22-6)

Voter Registration Forms in Schools

The *public secondary school building* itself (rather than an unspecified location within a "school corporation") is a distribution site for mail-in registration forms. (SEA 482 § 9; Effective date: April 25, 2005; Citation affected: 3-7-24-7)

Presidential Primary Results Electronic Certification

The statewide voter registration system must have the capability to permit the circuit court clerk to transmit presidential primary results to the state by using the system, in the same way that existing law will allow the transmittal of other reports or statements (including election results) by the counties. A related amendment permits a circuit court clerk to certify the official results of a presidential primary to the Election Division by using the statewide voter registration system without any requirement for a paper copy under the clerk's seal to be submitted.. (SEA 482 §§ 12 and 30, Effective date: July 1, 2005; Citations affected: 3-7-26.3-4; 3-8-3-9) (SEA 341 § 26; Effective date: July 1, 2005; Citations affected: 3-8-3-9)

Removal of Obsolete References Regarding Voter Registration Offices and Procedures

The current law providing for precinct election boards to stamp or mark the voter's registration affidavit showing that the voter has voted is repealed. The poll book is used for recording this information and the voter's registration record is updated from the poll book after the election. (SEA 341 § 91, Effective date: May 12, 2005; Citations affected: 3-11-8-28)

An obsolete reference to the "duplicate affidavit" required to be executed by the voter to register to vote was repealed. (SEA 482 § 16, Effective date: April 25, 2005; Citation affected: 3-7-32-1) Obsolete references in various statutes to "county voter registration office" are corrected.

(SEA 482 §§ 1, 25, 26, and 27; Effective date: January 1, 2006; Citations affected: 3-7-13-12, 3-7-34-7, 3-7-34-9, and 3-7-34-10) (SEA 482 §§ 17, 21, 23, 24, and 28; Effective date: April 25, 2005; Citations affected: 3-7-33-1, 3-7-34-2, 3-7-34-4, 3-7-34-6, and 3-7-34-13)

Signatures on Voter Registration Form

A person who holds a power of attorney to execute documents for a voter *may not* sign the voter registration application form for the voter. (SEA 482 § 16, Effective date: April 25, 2005; Citations affected: 3-7-32-1)

Updates Cross-Reference to Federal Law (NVRA)

Updates cross-references to the National Voter Registration Act (NVRA) in the titles that contain provisions regarding “full service” voter registration at public assistance agencies and the WIC (Women, Infants, and Children) program in IC 16. After the passage of the current law, a provision of NVRA was amended as part of the enactment of the Help America Vote Act in 2002. Three Indiana Code sections in IC 12, and one in IC 16, are repealed since they are superseded by the federal law references in SECTION 32 and SECTION 33. (SEA 482 §§ 32, 33, and 35; Effective date: April 25, 2005; Citations affected: 12-7-1-3, 16-18-1-3, 12-14-1.5-1.5 [repealed], 12-14-25-1.5 [repealed], 12-15-1.5-1.5 [repealed], and 16-35-1.6-1.5 [repealed])

Department of Health and Death Certificate Information

When the statewide voter registration system becomes operational, the department of health shall disclose the social security numbers of deceased persons to the Secretary of State and Election Division for voter list maintenance purposes. (SEA 482 § 34; Effective date: July 1, 2005; Citations affected: 16-37-3-9)

CAMPAIGN FINANCE AND CAMPAIGNING

Campaign Finance Fines in Uncontested Cases

A person who has been notified of a proposed civil penalty for a violation of campaign finance laws may enter into a settlement agreement with the Election Division to pay the proposed penalty and waive a hearing before the Indiana Election Commission. The agreement must: (1) provide for the payment of the proposed civil penalty not later than the date of the execution of the agreement; and (2) be presented to the Indiana Election Commission for ratification. This new statute also applies to committees that have been, or will be, notified by the Election Division of a proposed civil penalty before January 1, 2006. (HEA 1407 §§ 21 and 148, Effective Date: May 11, 2005; Citations affected: 3-9-4-20 [new] and Noncode)

New Report Filing Schedule for Candidates for State Office

Committees for statewide candidates are required to file additional campaign finance reports. For a year in which the election to the state office is held, the committee shall file:

- 1) A report by noon April 15 covering the period from January 1 through March 31;
- 2) A report by noon July 15 covering the period from April 1 through June 30;
- 3) A report by noon October 15 covering the period from July 1 through September 30;
- 4) A report by noon 7 days before the election covering the period from October 1 to 15 days before the election;
- 5) A report by noon the third Wednesday in January covering the period from 15 days before the election to December 31, including the cumulative totals for the year.

For a year in which an election to the state office is **not** held, the committee shall file:

- 1) A report by noon July 15 covering the period from January 1 through June 30;
- 2) A report by noon the third Wednesday in January covering the period from 15 days before the election to December 31, including the cumulative totals for the year.

The current law requiring reporting of certain large contributions no longer applies to a committee of a candidate for statewide office. Instead, a new statute has been enacted that applies to reporting of large contributions by committees for these candidates: the committee of a candidate for statewide office must file a report identifying a single contribution of Ten Thousand Dollars (\$10,000) or more noon seven days after the contribution is received. A committee of a candidate for statewide office must file a report identifying a contribution of One Thousand Dollars (\$1,000) or more within 48 hours of receiving the contribution where the contribution is received after the end of a campaign finance reporting period and before the deadline to file a report. A large contribution report may be filed electronically or by fax on a form prescribed by the Indiana Election Commission.

(HEA 1407 §§ 22, 23, 24, 25, 26 and 27); Effective Date: July 1, 2005; Citations affected: 3-9-5-6, 3-9-5-8, 3-9-5-9, 3-9-5-10; 3-9-5-20.1, and 3-9-5-22 [new])

Electronic Filing of Campaign Reports Required for Certain Committees

After December 31, 2005, the following committees must file their campaign finance reports electronically so that the Election Division is not required to manually reenter the data into the campaign finance database accessible to the public via the Internet:

- 1) committees of *all* candidates for statewide office; and
- 2) political action committees that have received more than fifty thousand dollars in contributions (\$50,000).

If the committee fails to file its campaign finance report as required, the Indiana Election Commission may impose a fine equal to the costs incurred by the Election Division for the manual entry of the data in the campaign finance database, plus any investigative costs. (HEA 1407 §§ 19 and 20; Effective Date: May 11, 2005; Citations affected: 3-9-4-4 and 3-9-4-16)

VOTING SYSTEMS

Voting System Technical Oversight Program Established

The Voting System Technology Oversight Program (VS TOP) is established. The Secretary of State is required to contract with an entity to administer the program. The person or entity designated to conduct the VS TOP shall develop and propose voting system procedures and standards; compile an inventory of voting equipment in Indiana; review ITA reports; recommend to the Indiana Election Commission whether to approve a voting system application; perform random voting system audits; review voting system contracts; assist with the development of quantity purchase agreements for voting systems; and other related voting system duties specified under contract. (HEA 1407 § 95; Effective date: July 1, 2005; Citations affected: 3-11-16 [new chapter])

The Secretary of State shall issue a request for proposals to enter into a contract to administer the VS TOP and extend invitations to public and private colleges and universities within Indiana to respond to the request for proposals. The Election Commission may approve a pending application to certify a voting system if the Commission determines that the application otherwise complies with the Indiana election code and either:

- 3) the contract to administer the VS TOP has not yet been entered into; or
- 4) the testing authority that has submitted a report to the Commission has not yet been accredited by the federal government under HAVA but is described in the Voting System Standards issued by the Federal Election Commission on April 30, 2002.

(HEA 1407 §§ 95 and 146; Effective dates (as noted); Citations affected: 3-11-16 [new chapter effective July 1, 2005]; Noncode [effective May 11, 2005])

Voting System Certification, Upgrade and Purchase

The statutes concerning the certification of optical scan and direct electronic record voting systems were amended to provide that:

- 1) A vendor must request approval of its voting system on an Election Commission-approved application;
- 2) The application may request initial certification of a voting system or request approval of an upgrade to a previously certified voting system;
- 3) The voting system or upgrade must be tested at a nationally accredited independent testing authority (ITA) to confirm that the system or upgrade complies with the federal Help America Vote Act (HAVA) and the 2002 FEC voting system standards (current Indiana law);
- 4) The ITA testing reports must be evaluated by the entity administering the new Voting System Technical Oversight Program with respect to an initial request for certification; and
- 5) The ITA testing reports must be evaluated by either the Election Division or the entity administering the Voting System Technical Oversight Program with respect to a request for the approval of an upgrade to a previously certified voting system.

The Commission may not approve the marketing, sale, lease, installation, or implementation of a voting system if the Commission finds that the system fails to meet all statutory requirements. If the Commission approves the certification of a voting system (or an approved upgrade to an already certified optical scan or DRE voting system), the approval expires October 1 in the next "non-election year", such as 2005 for example. (Former law provided for a 5-year voting system certification term, rather than a maximum 4-year term expiring on a specific uniform date.)

A voting system vendor may request that the Commission renew the certification of its voting system after a previous certification expires. The Election Division may use faxes, email, or other methods (instead of only regular U.S. mail) to notify current county users of the system that the vendor has asked for recertification. The person or entity operating under the new Technical Oversight Program (VS TOP) must provide the Commission with a report that the system components have not been changed before the Commission renews its certification of the system.

The person or entity operating under the new Technical Oversight Program (VS TOP) may periodically examine optical scan ballot or DRE voting systems to determine that the voting system in use in a county has the same hardware, firmware, and software as the version previously certified by the state. The Commission may, by majority vote, rescind its approval of the voting system and prohibit the installation, implementation, lease, market, sale, or use of the voting system if the Commission determines that the voting system in use in a county does not have the same hardware, firmware, and software as the version previously certified by the Commission.

A county shall file a copy of its voting system contracts, leases, purchase orders, etc., with the Election Division within 30 days after the document is approved by the county executive (county commissioners in most counties).

A law concerning the testing of voting systems initially certified before 1992 was repealed.

(HEA 1407 §§ 50 through 55, 57 through 64, and 93; Effective date: July 1, 2005; Citations affected: 3-11-7-12, 3-11-7-15, 3-11-7-16, 3-11-7-17, 3-11-7-18, 3-11-7-19, 3-11-7.5-2, 3-11-7.5-4, 3-11-7.5-5, 3-11-7.5-7, 3-11-7.5-21, 3-11-7.5-26, 3-11-7.5-27, 3-11-7.5-28, and 3-11-15-6)

Voting System Standards and Certification

The performance and test standards in IC 3-11-15 apply to all optical scan voting and DRE voting systems. A county may continue to use an optical scan or DRE voting system whose state certification has expired if: (1) the system was certified in Indiana before July 1, 2003 (when the 2002 voting standards took effect in Indiana); (2) the county purchased the system before that date; and (3) the voting system otherwise complies with federal law (HAVA) and state law. Statutory provisions permitting the Commission to adopt new voting system standards by rule are repealed. The adoption of new voting system standards must be done by legislation.

Any voter in a precinct using a DRE that is equipped to allow a blind or visually disabled person to vote independently may cast the voter's ballot on the DRE whether or not the voter has a disability.

(HEA 1407 §§ 92 and 94; Effective date: July 1, 2005; Citations affected: 3-11-15-2 and 3-11-15-13.3)

Standards for Computerized Voting Systems

The standards for computerized direct record electronic voting systems under federal law (the Help America Vote Act of 2002) that permit a blind or visually impaired individual to vote privately and independently and provide all voters an opportunity to change or correct a ballot error do not apply until after December 31, 2005, which is the effective date of these standards under HAVA. (SEA 14 § 25; Effective date: April 22, 2005; Citations affected: 3-11-14-23)

Definition of "Testing Authority"

The definition of "testing authority" is amended to include: (1) the term "independent laboratory" now used in current federal law (HAVA); and (2) laboratories accredited in the future at the federal level after the implementation of HAVA accreditation procedures. (HEA 1407 § 6; Effective date: July 1, 2005; Citations affected: 3-5-2-48.5)

Definition of "Chad"

The definition of "chad" contained at IC 3-12-1-9.5(b) is removed and relocated in a new section in the definitions chapter of the code (3-5-2). The sections in these statutes that define chad and indicate how to count a vote recorded on a punch card ballot expire December 31, 2005 since punch cards may not be used in Indiana elections after that date. (SEA 14 §§ 1 and 26; Effective date: April 22, 2005; Citations affected: 3-5-2-8.7 and 3-12-1-9.5)

Definition of "Paper Ballot"

"Paper ballot" means a hand-counted paper ballot, marked with a pen or pencil, and counted by hand, not by automatic tabulating machine. The term "paper ballot" does not include a ballot card (meaning either an optical scan card or a punch card). (SEA 14 § 2; Effective date: April 22, 2005; Citations affected: 3-5-2-34.7)

Voting System Vendor Violations

If a voting system vendor "knowingly, recklessly, or negligently" sells, leases, installs, implements or permits the use of a voting system in violation of Indiana law, the voting system vendor is subject to a civil penalty. The Secretary of State must conduct a hearing under the Administrative Orders and Procedures Act before imposing a penalty. If the Secretary of State determines that the vendor has violated this statute, the Secretary may impose a civil penalty of up

to \$300,000. Any fine collected under this law shall be deposited into a VS TOP account, to be administered by the Election Division, and used to provide funds for voting system certification enforcement. (HEA 1407 § 96; Effective date: July 1, 2005; Citations affected: 3-11-17 [new chapter])

Public Tests for DRE Voting Systems

A county election board must conduct a public test of its direct record electronic voting system at least 14 days before election day. (Current law requires this type of public test before the use of optical scan ballot card voting systems in an election.) At a minimum, the county election board must randomly select at least three precincts within the county and test the DREs to be used at those precincts on election day to ascertain that the system will correctly count the votes cast for all candidates and all public questions. Public notice of the time and place of the test shall be published at least 48 hours before the test. The test must include:

- 1) The visual inspection of the voting system and ballot labels;
- 2) The manual entry of a preaudited group of ballots marked so as to record a predetermined number of valid votes for each candidate and on each public question; and
- 3) At least one ballot for each office that has votes in excess of the number allowed by law in order to test the ability of the DRE to reject the overvotes.

An errorless count must be made before the use of the DRE on election day. After the test is completed, the voting system shall be sealed until election day and all test materials shall be sealed and retained.

The county election board shall enter the vote totals from the DREs tested into the component of the voting system that tabulates election results to determine whether this component properly tabulates the votes cast.

Not later than 7 days after conducting the public test, the county election board shall certify to the Election Division that the tests have been conducted in conformity with statute.

(HEA 1407, § 91; Effective Date: July 1, 2005; Citations affected: 3-11-14.5 [new chapter])

Zero Total Confirmation in Precinct for Ballot Card Voting Systems

Precinct election workers must confirm and certify that an optical scan ballot card voting system shows zero votes for each candidate and on each public question and that the system is otherwise in perfect order before the polls open. (Current law requires this procedure and certification must occur in a precinct using a DRE voting system.) . (HEA 1407, § 81; Effective date: July 1, 2005; Citations affected: 3-11-13-27)

Zero Total Confirmation by County Election Board for DRE Voting Systems

The county election board may determine that zero votes have been cast for all candidates and public questions on a DRE before the voting system is sent to the polls. Each precinct election board is still required to also determine that zero votes have been cast on the system before the system is used at the precinct. (HEA 1407 § 89; Effective date: July 1, 2005; Citations affected: 3-11-14-13)

Vote Totals in Precincts Using DREs

The inspector must announce after the close of the polls that the printout of precinct results is available for inspection by precinct election officials and watchers in precincts using a direct record electronic voting system. (Under current law, the inspector is required to read aloud the results for each candidate on the printout.) (HEA 1407 § 102; Effective date: July 1, 2005; Citations affected: 3-12-3.5-2)

Obsolete References to Voting Systems

Obsolete references and cross-references to voting machines, punch card voting systems, and paper ballots and to procedures for using them, including other technical changes relating to incorrect office titles, are removed or corrected.

(HEA 1407, §§ 1 through 5, 7, 10, 11, 12, 13, 16, 17, 28, 29, 30, 31, 32, 34, 35, 40, 41, 42, 44, 45, 46, 48, 49, 65, 67, 68, 71, 76, 77, 78, 79, 80, 82, 84, 85, 86, 87, 88, 98, 100, 101, 104, 105, 106, 107, 108, 109, 115, 116, 117, 118, 120, 121, 123, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, and 140; Effective date: July 1, 2005; Citations affected: 3-5-2-3, 3-5-2-4, 3-5-2-4.5, 3-5-2-5, 3-5-2-31, 3-5-2-52, 3-6-6-34, 3-6-8-4, 3-6-9-13, 3-6-10-5.5, 3-8-4-8, 3-8-4-9, 3-10-1-18, 3-10-1-19, 3-10-1-23, 3-10-1-27, 3-10-1-28, 3-10-7-31, 3-11-1.5-12, 3-11-2-7, 3-11-2-8, 3-11-3-3, 3-11-3-22, 3-11-3-35, 3-11-6-1, 3-11-7-1, 3-11-7-4, 3-11-8-7, 3-11-9-2, 3-11-9-3, 3-11-10-16, 3-11-13-6, 3-11-13-14, 3-11-13-18, 3-11-13-24, 3-11-13-26, 3-11-13-28.5, 3-11-13-29, 3-11-13-30, 3-11-13-31.7, 3-11-13-33, 3-11-13-35, 3-11.5-4-24, 3-12-1-9.5, 3-12-2-6, 3-12-4-15, 3-12-4-18, 3-12-4-19, 3-12-4-20, 3-12-4-21, 3-12-4-22, 3-12-6-16, 3-12-6-19, 3-12-6-20, 3-12-8-2, 3-12-8-6, 3-12-8-17, 3-12-11-3, 3-12-11-18, 3-12-12-11, 3-12-12-14, 3-12-12-16, 3-14-2-18, 3-14-3-3, 3-14-3-5, 3-14-3-6, 3-14-3-8, 3-14-4-8, and 3-14-4-10)

(SEA 341 § 51, Effective date: July 1, 2005; Citations affected: 3-11-3-11)

Voting System Reimbursement Program

The priority given to applications to replace lever machines and punch cards under the voting system reimbursement program expires January 1, 2006 since all lever machines and punch cards must be replaced before that date. (SEA 1407 § 47; Effective date: July 1, 2005; Citations affected: 3-11-6.5-6.1)

CANDIDATES AND OFFICEHOLDERS

Filing by FAX or E-mail with State or Local Election Offices Restricted

Except as otherwise expressly authorized or required in the election code, a filing by a person with the Indiana Election Commission, the State Recount Commission, the Election Division, a county election board, or a town election board may not be made by fax or electronic mail. (SEA 341 § 1, Effective date: July 1, 2005); Citations affected: 3-5-4-1.7 [new])

Primary Candidate Filings With Election Division

A declaration of candidacy for a major party's nomination in a primary is considered to be "filed" with the Election Division when the declaration is file stamped by the Election Division, not when the declaration is "received" in the mail. This change conforms with the definition of filing that applies throughout the election code (see IC 3-5-2-24.5).

When the Election Division receives a declaration of candidacy from a candidate required to file a statement of economic interests (state legislators, judges, statewide candidates), the Election Division may accept a file stamped copy of the economic interest statement (or a receipt issued by the other office). Under current practice, judicial

candidates are given a file stamped copy, not a separate receipt. The Election Division is required to *reject* a filing that does not comply with the requirement for filing proof of proper filing of the economic interest statement. (SEA 341 § 24, Effective date: July 1, 2005; Citations affected: 3-8-2-11)

First Date to File as a Write-in Candidate

The first date that a write-in candidate for the general or municipal election may file is January 1 of the year in which the general or municipal election will be held. The former law setting the first date for write-in candidates to file was repealed in 2004, and no first date to file was specified. (SEA 341 § 23, Effective date: May 12, 2005; Citations affected: 3-8-2-4)

First Filing Date for Petitions of Nomination for Gary and Lake Station School Board Candidates

The first day for filing petitions of nomination for election for school board office in Gary and Lake Station is the same day as the first day for filing petitions of nomination for all other school board offices. Corrects a reference to the “circuit court clerk” since all candidate filings in Lake County are with the director of the combined board of elections and registration under IC 3-6-5.2-6. Updates references to the election schedule for these offices. (SEA 341 §§ 71, 73, 79, and 81; Effective date: July 1, 2005; Citations affected: 20-3-21-5, 20-3-21-9, 20-3-22-5, 20-3-22-9, 20-23-12-5, and 20-23-14-5)

Primary Election Candidate Withdrawal

A primary candidate must withdraw as a candidate if the candidate is disqualified for one of the reasons listed in IC 3-8-1-5 (felony conviction; federal military regulations; the Hatch Act), or due to moving from the election district. The candidate must withdraw as a primary candidate for these reasons, even after the 71 day deadline to voluntarily withdraw without stating a reason has passed. (The same requirement applies to general election candidates under current law.) (IC 3-8-7-28). (SEA 341 § 25; Effective date: July 1, 2005; Citations affected: 3-8-2-20)

Removal of Candidate for Statewide or State Legislative Office from the General Election Ballot

A new law applies concerning the removal of a candidate for a statewide office (other than a judicial office) or for a state legislative office from the general election ballot. A registered voter of the relevant election district may challenge the qualifications of a candidate to remove the candidate from the ballot. The challenge must:

- (1) be filed with the Election Division not later than 40 days before the general election;
- (2) be a sworn statement questioning the qualifications of the candidate; and
- (3) set forth the facts known by the challenger concerning this question.

The Indiana Election Commission shall conduct and conclude its hearing on the challenge within 3 business days after the challenge is filed with the Election Division. The Commission shall announce its determination not later than one business day after conclusion of hearing. If the Commission does not announce its determination by this deadline, the Commission is considered to have dismissed the challenge.

A candidate may not be challenged under this new procedure if:

- 1) the candidate was previously challenged using this procedure;
- 2) the challenge under this procedure would be for the same reasons as the previous challenge to the candidate; and

- 3) the Indiana Election Commission already has conducted a hearing on the challenge and made a final determination in favor of the candidate.

After the Commission has made a final determination of the challenge, the challenged candidate or the challenger may appeal the Commission's determination, including a dismissal due to the Commission's failure to make a determination by the deadline. An appeal must be filed directly with the State Court of Appeals under the same terms, conditions, and standards that apply to other civil appeals.

In any event, at noon, 30 days before the election, any challenge that is pending before the Commission or the Court of Appeals is dismissed and the name of the challenged candidate may not be removed from the general election ballot, and another individual may not be named to replace the challenged candidate on the ballot, and all votes cast for the challenged candidate must be counted and reported under the name of the challenged candidate.

The new law places a time limit on candidate withdrawals regardless of the reason for the withdrawal. If a candidate attempts to withdraw as a candidate later than noon 30 days before the general election, the candidate may not be removed from the ballot, or replaced by another individual on the ballot. All votes cast for a candidate who attempts to withdraw later than noon 30 days before the general election are counted and reported under the name of the candidate.

If a candidate who attempted to withdraw later than noon 30 days before the general election: (1) receives the most votes at the general election; and (2) is determined to be disqualified as a candidate, a vacancy in the office occurs. The resulting vacancy shall be filled as if an eligible candidate of the same political party as the disqualified candidate had been elected, and in the manner otherwise provided by law (a caucus of precinct committeemen under IC 3-13-5 for a state legislative candidate, for example). (SEA 341 § 32, Effective date: July 1, 2005; Citations affected: 3-8-8 [new chapter])

Precinct Committeemen Eligibility in Ballot Vacancy Caucus

If a candidate vacancy occurs because no candidate was nominated at the primary where precinct committeemen are also elected (2006, for example), then an appointed precinct committeeman is eligible to participate in the political party's caucus to fill the ballot vacancy if the committeeman has been reappointed following the primary in accordance with the party's rules. Current law provides that an elected precinct committeeman does not "hold over" in this political party office following the primary, which means that the committeemen could not participate in the ballot vacancy caucus following the primary (IC 3-6-1-15). (SEA 341 § 63, Effective date: July 1, 2005; Citation affected: 3-13-1-10)

Libertarian Party Ballot Vacancies

If a candidate vacancy occurs following a Libertarian Party county, city, or large town nominating convention, the party must fill the candidate vacancy no later than the date by which a major political party (Democratic and Republican) must fill a candidate vacancy resulting from the primary (currently, noon June 30). If the party fills this candidate vacancy, the party must file the *certificate of candidate selection* no later than the deadline for a major political party to file the certificate (currently, noon July 3).

If a Libertarian Party candidate vacancy occurs due to the death, withdrawal, or disqualification of a candidate, the party may fill the vacancy within the same period of time that a major party would be permitted to fill a candidate vacancy under those circumstances. (SEA 341 § 64, Effective date: July 1, 2005; Citation affected: 3-13-1-20)

Ballot Vacancy Candidate Qualifications

A candidate for filling an early ballot vacancy or a late ballot vacancy must comply with the requirements applicable to candidates for nomination by primary or party convention under IC 3-8-1. (SEA 341, §§ 62 and 65, Effective date: July 1, 2005; Citation affected: 3-13-1-2.5 [new]; 3-13-2-2.5 [new])

Effect of Felony Conviction on Candidate and Officeholder

Conflicts have been reconciled between several provisions of current law concerning the effect of a criminal felony conviction on a person's ability to run as a candidate for, assuming, or holding elected office. A "felony conviction" is defined as conviction in any jurisdiction for which the convicted person might have been imprisoned for at least one year. However, a felony conviction does not include a conviction:

- 1) for which the person has been pardoned; or
- 2) that has been:
 - A) reversed;
 - B) vacated;
 - C) set aside; or
 - D) not entered because the trial court did not accept the person's guilty plea.

A person is disqualified as a candidate for office, prohibited from assuming office, or subject to removal from office (and may not receive salary) when in a:

- 1) jury trial, a jury publicly announces a verdict against the person for a felony;
- 2) bench trial, the court publicly announces a verdict against the person for a felony; or
- 3) guilty plea hearing, the person pleads guilty or *nolo contendere* (no contest) to a felony;

A person remains disqualified from running as a candidate, or assuming office, even if the felony conviction is reduced to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5. In addition, a person's removal from office by operation of law (and loss of salary) occurs even if the felony conviction is reduced to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5.

However, if the person holds elected office and the conviction is:

- 1) reversed;
- 2) vacated;
- 3) set aside;
- 4) for a felony other than a felony arising out of an action taken in the officer's official capacity, reduced to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5; or
- 5) not entered because the trial court did not accept the guilty plea;

and the officer's term has not expired, the officer shall be reinstated in office and receive any salary or other remuneration which the officer would have received had the officer not been removed from office. If the conviction is

reversed, vacated, or set aside, and the officer's term has expired, the officer shall receive any salary or other remuneration which the officer would have received had the officer not been removed from office.

(SEA 18 §§ 1, 2 and 3; Effective date: May 4, 2005: 3-8-1-5 and 5-8-1-37)

Office Vacancies Due to Death of Officeholder

A new procedure is established to give written notice of the death of an officeholder to document that the vacancy has occurred and to begin the process of filling the vacancy in office.

The person who certifies the death of an officeholder shall:

- 1) state the information that causes the person to believe the officeholder has died; and
- 2) certify, under the penalties for perjury, that to the best of the person's knowledge and belief, the information stated is true.

The certification must be filed with the following:

- 1) The governor in the case of the death of a person who holds state office or a person who is a judge of a circuit, superior, probate, county or city court and the governor shall, if reasonably satisfied that the information is true, fill the vacancy as provided by law.
- 2) The secretary of state in case of the death of a person who holds a legislative office and the secretary of state shall, if reasonably satisfied that the information is true, give notice of the death to the state chairman of the political party that elected or selected the deceased individual within 72 hours after the secretary of state determines that he or she is reasonably satisfied that the information is true.
- 3) The circuit court clerk of the county in which the officeholder resided in the case of the person who holds a county, city, town, township, or school corporation office not covered by section 1) above. The circuit court clerk shall, if reasonably satisfied that the information is true, give the notice to either (a) the person who must give notice of a political party caucus (state or county chairman) or to the person who must give notice of a meeting to fill the vacancy (county auditor gives notice of a meeting to the county commissioners, for example), OR (b) to the person or entity who has the power to fill the vacancy if no political party caucus is required. The circuit court clerk must give the required notice within 72 hours after the clerk is reasonably satisfied that the information is true. For example, if the entity with the power to fill the vacancy is the county commissioners or county council, then the circuit court clerk shall forward the notice to the county auditor. If the entity with the power to fill the vacancy is the city council, then the circuit court clerk shall forward the notice to the city clerk, etc.

A vacancy may not be filled until the notice is filed with the person who has the power to fill the vacancy or the person who must give notice of the caucus to fill the vacancy. The period in which to fill a vacancy by caucus does not begin until the person who must give notice of the caucus or notice of the meeting receives the notice of death.

Former laws permitting a town council to hold a public meeting to determine that a town council vacancy has occurred because of the death of a council member are repealed.

Cross references to these vacancy by reason of death provisions are added to laws providing for filling vacancies in school board offices. The remaining members of the school board fill the vacancy after the secretary of the board receives notice of the death from the circuit court clerk.

If an officeholder is removed by operation of law for conviction of a felony, a procedure to document that removal and to begin the vacancy filling process is established. The court hearing the case must file a certified copy of the sentencing order with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice of death, and this notice will trigger the vacancy filling provisions. If the person's conviction is reversed, vacated or set aside, and the officer's term has not expired, the court must file a certified copy of the order reversing, vacating or setting aside the conviction with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the court's order must also give notice to the person who was selected to fill the vacancy before the court order was issued.

A court may include in a sentencing order for the conviction of a misdemeanor that the convicted person is incapable of holding a public office of trust or profit. If the court includes such a provision in a sentencing order and it results in a vacancy in office, the court must file a certified copy of the sentencing order with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice of death, and this notice will trigger the vacancy filling provisions.

Whenever a court enters a judgment removing an individual from public office the court must file a certified copy of its judgment with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice of death, and this notice will trigger the vacancy filling provisions.

(SEA 179 §§ 1 through 35; Effective date: July 1, 2005; Citations affected: 3-13-4-3, 3-13-5-1, 3-13-5-2, 3-13-6-1, 3-13-7-2, 3-13-7-3, 3-13-8-3, 3-13-8-4, 3-13-8-5, 3-13-8-6, 3-13-8-7, 3-13-8-8, 3-13-8-9, 3-13-8-10, 3-13-9-2, 3-13-9-3, 3-13-9-4, 3-13-10-2, 3-13-10-3, 3-13-10-4, 3-13-10-5, 3-13-11-3, 3-13-11-3.5, 5-8-1-37, 5-8-5-1, 5-8-5-3, 5-8-5-4, 5-8-6, 20-3-11-3.1, 20-5-3-3.5, 20-25-3-4, 20-26-4-4.5, 34-17-3-2, and 35-50-5-1.1)

BALLOT REQUIREMENTS AND DESIGN

Primary Election Ballot Layout

Computerized voting system (DRE) ballot labels used in a primary must be of uniform size and of the same paper quality as the ballot labels used at a general election. The name of the party shall be placed at the top or beginning of the ballot for all types of voting systems.

Each political party conducting a primary election must have separate ballot cards (for optical scan voting systems) or separate ballot labels (for DREs) for that party's candidates in the primary. The political parties may be distinguished by using different colored paper ballots, ballot cards or ballot labels to identify the candidates seeking that party's nomination. If a punch card ballot is used before 2006, the name of the candidate appears on the ballot is indicated by reference to a corresponding number printed on the punch card. If an optical scan ballot card voting system does not print the name of the candidate on the ballot card, then the name shall appear on the ballot and indicated by reference to a corresponding number on the ballot card.

The instructions on a primary ballot must describe how to make a voting mark specific for each type of voting system.

If school board offices or local public questions are to be voted on at the same time as the primary election using a DRE, these offices and questions can either appear on a separate screen for each office or public question, or after the other office nominations, but at the beginning of separate columns or pages. These offices and questions must appear after the other office nominations if a ballot card system is used.

The instructions in current law for casting a hand-counted paper ballot at a primary election do not apply to casting a vote by any other voting systems, such as a punch card, optical scan ballot card, or computerized voting system. The procedures for casting a vote on voting systems other than paper are found in current law at IC 3-11-12, 3-11-13, and IC 3-11-14, and apply to both a primary and general election.

(SEA 14 §§ 3, 4, 5, 6, 8, 19, Effective date: April 22, 2005; Citations affected: 3-10-1-13, 3-10-1-15, 3-10-1-17, 3-10-1-19, 3-10-1-26, and 3-11-14-3.5)

Specifying Which State Statutes Apply to Ballot Designs Used on Each Type of Voting Systems

Current statutes specifying ballot format (IC 3-11-2) only apply to paper ballots. References to other types of voting system ballot layouts in this Code chapter are repealed and ballot format statutes are relocated to the Code chapters that apply to that type of voting system, such as IC 3-11-13 (ballot card) and IC 3-11-14 (DRE). (SEA 14 §§ 14 through 18; Effective date: April 22, 2005; Citations affected: 3-11-2-0.5 [new], 3-11-2-10, 3-11-2-12.9, 3-11-2-13, and 3-11-2-14)

Ballot Card Layout Specifications

Statutes in this chapter (IC 3-11-13) contain ballot format requirements for ballot card voting systems. Current laws on ballot card layout formerly in IC 3-11-2, or which apply to casting a ballot on all types of voting systems (such as the order of offices on the ballot) are relocated to or restated in this Code chapter. Candidates for each office must be listed under the name of that office on a ballot card, with the candidates being listed in the party order specified under current law. The different methods currently used for marking various styles of optical scan ballots (marking an arrow, oval, or square) are authorized as the method for marking that type of ballot card. Ballot format requirements for optical scan systems that do not list the names of candidates or the text of public questions on the face of the ballot card but use a separate ballot that lists the names of candidates with a number that corresponds to a number on the ballot card are also added to this Code chapter. (SEA 14 §§ 19 and 20; Effective date: April 22, 2005; Citations affected: 3-11-13-11 and 3-11-13-31.7)

Ballot Layout Specifications for Computerized Voting Systems

The requirements for computerized voting system (DRE) ballot layouts are relocated to the Code chapter governing that type of voting system. The candidates for each office are to be listed under the name of that office with the candidates being listed in the party order specified under current law. The different methods currently used for casting a vote on a DRE (touching a screen or pushing a button) are added to this Code Chapter. References to IC 3-11-2 to ballot format requirements which apply to all voting systems (such as the order of offices on the ballot) are restated in this Code chapter. (SEA 14 §§ 21 through 24; Effective date: April 22, 2005; Citations affected: 3-11-14-3, 3-11-14-3.5, 3-11-14-10, and 3-11-14-12)

Cross-References Outside of the Election Code to Ballot Layout Requirements

Cross-references outside of IC 3 to ballot layout requirements are changed to conform to whichever type of voting system a county is using in the election for the office. These cross-references concern school board elections; retention elections for state level justices and judges; circuit court and county court judge elections; Allen, Lake, Marion, St. Joseph, and Vanderburgh Superior court judge elections. These statutes now contain a generic cross reference to the Code article (IC 3-11) which applies to the different types of voting systems in use in the counties rather than to the specific ballot layout for paper ballots (IC 3-11-2). (SEA 14 §§ 27 through 36; Effective date: April 22, 2005; Citations affected: 20-4-1-26.4, 33-24-2-5, 33-25-2-5, 33-28-2-2, 33-30-3-3, 33-33-2-9, 33-33-45-42, 33-33-49-13, and 33-33-71-43)

Write-in Candidates and Independent Candidates for Election to Office Held on Same Day as Primary

Under current law, write-in or independent candidates may not file for nomination in a primary election. Ballot card or computerized voting system primary election ballots are only required to contain information about write-in voting or independent candidates if there is an election to an office that permits write-in voting (school board) or if independent candidates for election to an office (a special election) will be on the ballot at the same time as the primary election. (SEA 14 § 7; Effective date: April 22, 2005; Citations affected: 3-10-1-19.7)

President and Vice-Presidential Tickets and Voting System Ballot Formats

On a computerized voting system (DRE) presidential and vice-presidential candidates at the general election can appear either grouped together on a separate screen or grouped together under the names of the two offices. Candidates for president and vice-president must appear grouped together under the names of the two offices if a ballot card system is used.

The specific ballot layout for presidential and vice-presidential candidates at a general election is set out in separate laws that apply to paper ballots, optical scan ballot cards, or DREs. (SEA 14 §§ 9 through 12; Effective date: April 22, 2005: 3-10-4-1, 3-10-4-2, 3-10-4-2.1 [new], and 3-10-4-2.2 [new])

Write-in Candidates for President

Corrects a cross-reference and repeals language implying that the names of presidential write-in candidates are to be printed on the ballots. (SEA 341 § 41, Effective Date: July 1, 2005; Citations affected: 3-10-4-1)

Small Town Paper Ballots

A small town election board may prepare ballots in the format specified for the type of voting system used by the town (not just paper ballots). The current provision that permits a small town election board to print or copy its ballots for use in the town election only applies to paper ballots and not to ballots cast on other types of voting systems. (SEA 14 § 13; Effective date: April 22, 2005; Citations affected: 3-10-7-32)

VOTING QUALIFICATIONS AND PROCEDURES

Photo Identification

Certain voters must present photo identification before voting. The photo identification must:

- 1) be a document issued by the United States or the State of Indiana;
- 2) show the name of the voter and the name must conform to the name on the voter's registration record;
- 3) contain a photograph of the voter; and
- 4) include an expiration date showing that the photo identification has not expired or that the photo identification expired after the date of the most recent general election.

The photo identification requirement applies to a person who votes:

- 1) in person at the polls on election day; or
- 2) absentee in the office of the circuit court clerk or a satellite office established by unanimous vote of the county election board;

The photo identification requirement does not apply to a person who votes:

- 1) absentee by mail;
- 2) absentee by traveling board; or
- 3) in person on election day in a precinct whose polling place is located at the state licensed care facility where the voter resides.

A precinct election officer must ask a voter who offers to vote to provide photo identification before the voter is permitted to sign the poll list and vote. If a voter is unable or declines to produce the required photo identification, or a member of the precinct election board determines that the photo identification offered by the voter does not meet statutory requirements, then the voter will be permitted to vote a provisional ballot if the voter wants to vote. A member of the precinct election board must challenge the voter on a form that indicates that the challenge is based upon the voter's inability or declination to provide photo identification or the photo identification offered by the voter does not meet statutory requirements. If the challenged voter signs the appropriate challenge counter-affidavit required for a provisional ballot then the voter shall be issued a provisional ballot.

A voter who votes absentee in person in the clerk's office (or at a satellite office) must also provide photo identification before being permitted to vote. If the voter is unable or declines to present the photo identification, or a member of the absentee voter board determines that the photo identification provided by the voter does not meet statutory requirements, then the voter shall be permitted to cast an absentee ballot and the voter's absentee ballot shall be treated as a provisional ballot.

If a voter votes a provisional ballot because the voter was unable or declined to present a photo identification, or a member of the precinct election board or absentee voter board determined that the photo identification provided by the voter did not meet statutory requirements, the county election board shall find that the voter's provisional ballot is valid and direct that the provisional ballot be opened and processed as a provisional ballot if the voter appears before the county election board after leaving the polls and before *noon on the second Monday following the election* and:

- 1) the voter was not required to vote a provisional ballot for any other reason (for example, the voter is challenged because the voter is not on the poll list);
- 2) the voter produces photo identification to the county election board or circuit court clerk; and
- 3) the voter signs an affidavit indicating that the voter is the same person who cast the provisional ballot on election day.

In addition, the voter may also satisfy the photo identification requirement in another manner. The county election board shall find that the voter's provisional ballot is valid and direct that the provisional ballot be opened and processed as a provisional ballot if the voter appears before the county election board after leaving the polls and before *noon on the second Monday following the election* and:

- 1) the voter was not required to vote a provisional ballot for any other reason (for example, the voter is challenged because the voter is not on the poll list); and
- 2) the voter signs an affidavit indicating that the voter is the same person who cast the provisional ballot on election day and that the voter cannot obtain a photo identification because:
 - a. the voter is indigent and unable to obtain a photo identification without the payment of a fee; or
 - b. the voter has a religious objection to being photographed.

If a voter fails by the deadline to appear before the county election board and execute one of the affidavits described above, then the county election board shall find that the voter's provisional ballot is invalid and note on the provisional ballot envelope: "Provisional ballot determined invalid."

If the county election board determines that a voter has been challenged for a cause other than the voter's inability or declination to provide valid photo identification, then the board shall note on the provisional ballot envelope that the voter has complied with the photo identification requirement and proceed to determine the challenge as set forth in the challenge affidavit.

Some first time voters who registered by mail remain subject to the Help America Vote Act (HAVA) requirement to provide additional documentation showing the residence address of the voter. (Current law requires this documentation from voters who register by mail and have not previously voted within the *county*. After implementation of the Statewide Voter Registration System on January 1, 2006, this identification documentation will be required from voters who register by mail and have not previously voted within *Indiana*.)

This type of voter is required to submit the additional documentation regardless of how the voter votes (absentee by mail, traveling board, in-person absentee in the clerk's office, and in person voting at a polling place on election day). If this type of voter votes in person at the polls on election day or votes in person absentee in the clerk's office or at a satellite office, then this voter must present both the additional residence documentation required under prior law and the photo identification requirement under the new law. If the voter's photo identification also shows an address that conforms to the voter's registration record, then the photo identification will also meet the identification documentation requirements under prior law. However, if this type of voter produces a document that does not meet the definition of "proof of identification" applicable to photo identification, (for example, a utility bill with the voter's name and residence address) to meet the additional documentation requirements for first time voters who registered by mail, then the voter is required to present photo identification before voting a regular ballot on election day or in person absentee in the clerk's office or at a satellite office.

The bureau of motor vehicles may not impose a fee for the issuance of a photo identification card when an individual does not have a valid Indiana driver's license and will be at least 18 by the next general, municipal, or special election.

Full service license branches must remain open from 8:30 a.m. to 8:00 p.m. on the day before each general, municipal, primary and special election and from 6:00 a.m. to 6:00 p.m. each general, municipal, primary and special election day solely for the purpose of issuing driver's licenses and photo identification cards. The Motor Vehicle Commission shall designate another day as compensatory time off or authorize overtime pay for license branch personnel required to work on election day.

(SEA 483 §§ 1 through 6; 8 through 14; and 15 through 18; Effective date: July 1, 2005; Citations affected: 3-5-2-40.5 [new], 3-10-1, 3-11-8, 3-11-10, 3-11.5-4-16, 3-11.7-2-3, 3-11.7-5-2, 3-11.7-5-2.5 [new], 3-11.7-5-3, 9-24-16-10, 9-29-3-14, 9-29-9-15, and Noncode)

(SEA 1407 §§ 56, 142, and 143, Effective date: July 1, 2005, Citations affected: 9-16-1-7 [new], 9-16-4-1, and 3-11.7-5-19 [as to deadline to meet photo identification requirement])

(SEA 15 §§ 14, 16, and 17; Effective date: July 1 2005; Citations affected: 3-11-10-26, 3-11.7-5-2, 3-11.7-5-2.5, 3-11.7-5-3)

Poll Clerk Marking List for Watcher or Pollbook Holder

The poll clerk may keep a list, in addition to the official poll list, that contains the names of individuals who have signed the official poll list to provide to a watcher or a pollbook holder if no voter is delayed as a result and the poll clerk refrains from electioneering. The poll clerk may not keep any other list. (SEA 483, § 7; Effective Date: July 1, 2005; Citations affected: 3-11-8-29)

ABSENTEE BALLOT VOTING PROCEDURES

Photo Identification and Absentee Voting

An absentee voter casting a ballot before an absentee board in the office of the circuit court clerk (or a satellite office of the clerk) before election day is required to provide proof of identification in the same manner as a voter who casts a vote in person at the polls on election day. (See "Photo Identification" section of this Summary.) If the voter is unable or declines to present the identification, the voter shall be permitted to cast an absentee ballot, which shall be treated as a provisional ballot. However, an absentee voter casting a ballot by mail or before a traveling board is **not** required to provide proof of identification when casting the absentee ballot. (SEA 15 §§ 10 and 14; Effective date: July 1, 2005; Citations affected: 3-11-10-1.2 and 3-11-10-26)

Absentee Voter's Bill of Rights.

The Indiana Election Commission must prescribe a statement that includes information concerning: (1) the rights and responsibilities of voters in casting and returning an absentee ballot; (2) the laws concerning providing assistance to an absentee voter, completion of the ballot in secret, and return of the voted ballot; and (3) how to report election law and absentee ballot law violations. A county election board must provide a voter who receives an absentee ballot by mail with a copy of the Absentee Voter's Bill of Rights. (SEA 15 §§ 1 and 13; Effective date: July 1, 2005; Citations affected: 3-5-8-2.5 [new] and 3-11-10-25)

Absentee Ballot Applications

Absentee ballot applications must require the applicant to swear or affirm that all of the information set forth on the application is true to the best of the applicant's knowledge or belief. The absentee ballot application must also require a person who assisted with the completion of the application to swear under the penalties of perjury to the statements required to be made by the assisting person on the application. The absentee ballot application must also set forth the penalties for perjury. These absentee ballot application requirements do not apply to certain military and overseas voters who swear an oath specified under federal law.

A voter must sign the voter's own absentee ballot application, except for certain voters with disabilities. If a disabled voter cannot sign the application, the voter can name a person to hold the voter's power of attorney, and this person

may then sign the absentee application for the voter. The county election board can designate a person to sign the voter's application if the disabled voter has not named a person to hold the voter's power of attorney.

A person may provide another person with a "pre-completed" absentee ballot application with the following items provided:

- 1) the voter's name;
- 2) registration or mailing address;
- 3) date of birth; and
- 4) voter identification number.

However, a person is prohibited from providing another person with an absentee ballot application with the following items "pre-completed" on the application:

- 1) the address to mail the ballot (other than the individual's own registration address);
- 2) the party ballot choice in a primary election;
- 3) the types of absentee ballots (such as presidential only, or school board only); and
- 4) the reason why the voter is qualified to vote absentee by mail or before a traveling board.

The county election board shall deny a pre-completed absentee ballot application if the application is challenged by a county election board member or absentee voter board member in a sworn affidavit, and the county election board, after conducting a hearing, determines that the absentee ballot application violates this requirement.

If a person assists another person in completing an absentee ballot application, the person assisting must state the following information on the application under the penalties of perjury:

- 1) The name, address, and telephone numbers of the person assisting.
- 2) The date of the assistance.
- 3) That the individual assisting complied with state laws regarding submitting applications (such as timeliness).
- 4) That the person assisting had no reason to believe that the applicant was ineligible or did not properly complete and sign the application.

A person who receives an absentee ballot application from another person must file the application with the county election board by noon 7 days after receiving it, or by the applicable absentee ballot deadline, whichever occurs first. However, this requirement for timely delivery does not apply to a postal employee or to an employee of a bonded courier company.

A person, other than a postal employee or an employee of a bonded courier company, who files an absentee ballot application other than the person's own application, must complete and file an affidavit stating the following:

- 1) The name, address, and telephone numbers of the person filing the application.

- 2) That the individual filing the application complied with state laws regarding submitting applications.
- 3) That the person filing the application had no reason to believe that the applicant was ineligible or did not properly complete and sign the application.
- 4) That the affidavit is completed under the penalties of perjury (with those penalties being set out on the affidavit).

The county election board shall record the date and time the affidavit was filed.

(SEA 15 §§ 2 and 4; Effective date: July 1, 2005; Citations affected: 3-11-4-2 and 3-11-4-5)

Absentee Ballot Application Review

The county election board (or absentee voter board in clerk's office) must examine each absentee ballot application to determine whether:

- 1) the applicant is a voter;
- 2) the information on the application appears to be true; and
- 3) the application has been completed and filed in accordance with Indiana and federal law.

A county election board member or absentee ballot voter board member may challenge an absentee ballot application by filing an affidavit. The Indiana Election Commission prescribes the form of the affidavit. The affidavit must contain a brief statement of the facts indicating:

- 1) that the applicant is not a voter of the precinct;
- 2) that the application contains a false statement; or
- 3) that the application has not been properly executed or filed in accordance with state or federal law.

If the absentee voter board member files a challenge affidavit and the two absentee board members cannot agree on whether to approve or deny the application, the absentee voter board members shall refer the application to the county election board for determination.

If a challenge affidavit challenges an absentee ballot application submitted by a person who is applying to vote absentee in the clerk's office, then the absentee voter board shall provide the person with an absentee ballot and the absentee ballot will be processed as a provisional ballot on election day.

Once the challenge affidavit is filed, the county election board shall conduct a hearing on the challenge and either approve or deny the application. The county election board may also refer the matter, if appropriate, to the county prosecuting attorney as provided under current law.

The requirement that absentee ballots be mailed on the same day that the absentee ballot application is received does not apply to absentee ballot applications that have been challenged.

(SEA 15 §§ 5 through 7; Effective date: July 1, 2005; Citations affected; IC 3-11-4-17.5, IC 3-11-4-18, and IC 3-11-4-18.5)

New Qualifications and Procedures for Voting Absentee By Mail

The qualifications to vote absentee by mail have been modified. For example, a voter who is requesting a mailed ballot who has indicated on the voter's absentee ballot application that the voter "will be absent from the county on election day" to state on the absentee ballot application that the vote has a "specific, reasonable expectation" for being absent during the entire 12 hours that the polls are open.

A confined voter (or a person caring for a confined voter) who requests a mailed ballot must indicate on the voter's absentee ballot application that the voter will be confined or providing care during the entire 12 hours that the polls are open.

A voter may now vote absentee by mail if: (1) the voter indicates on the voter's absentee ballot application that the voter is prevented from voting due to observance of a religious discipline or religious holiday during the entire 12 hours the polls are open; or (2) the voter is a participant in the Attorney General's address confidentiality program (for domestic abuse).

A voter who receives an absentee ballot by mail must mark the ballot in secret and seal the ballot in the envelope provided. After voting the mailed absentee ballot, the voter must then deliver the sealed absentee ballot envelope to the county election board by: 1) depositing the envelope in the mail; 2) delivering the envelope in person; or 3) delivering the envelope to a member of the voter's household or the voter's attorney in fact.

Any person who delivers a voted absentee ballot to the county election board must complete an affidavit that contains:

- 1) information concerning the voter;
- 2) information concerning the person delivering the voted absentee ballot;
- 3) the person's statement that the person is delivering the absentee ballot as a member of the voter's household or the voter's attorney in fact (if the individual is an attorney in fact, they must attach a copy of the power or attorney unless it has already been filed with the county election board);
- 4) the date and location where the absentee ballot was delivered to this person;
- 5) a statement that the individual delivering the absentee ballot has complied with Indiana laws governing absentee ballots;
- 6) a statement that the affidavit is executed under the penalties of perjury, including a statement of the penalties for perjury.

(SEA 15 § 12; Effective date: July 1, 2005; Citations affected: IC 3-11-10-24)

The provisions listing the qualifications for voting an absentee ballot by mail are consolidated and cross-referenced. (SEA 15 §§ 6 and 12; Effective date: July 1, 2005; Citations affected; IC 3-11-4-18 and IC 3-11-10-24)

Absentee Ballot Secrecy Envelope; Penalties for Perjury

The absentee ballot secrecy envelope must set forth the penalties for perjury. (SEA 15 § 8; Effective date: July 1, 2005; Citations affected; IC 3-11-4-21)

Returning Absentee Ballots Received by Mail

Current law permits a voter who is voting absentee by mail to deliver the absentee ballot envelope, after the voter has marked the ballot, to a member of a voter's household or the voter's attorney in fact for delivery to the county election board. Under new law, a member of a voter's household or the voter's attorney in fact may also deliver the envelope containing the voted ballot to the county election board in person, by U.S. mail, or by using a bonded courier company. (SEA 15 § 9 and 12; Effective date: July 1, 2005; Citations affected; IC 3-11-4-18 and IC 3-11-10-24)

Electioneering and Absentee Ballots

The crime of "electioneering" (a Class A misdemeanor) may not be committed in the presence of a voter known to possess the voter's absentee ballot. However, the voter's spouse, the guardian of an incapacitated voter, or a member of the voter's household is not prohibited in engaging in electioneering in the presence of the absentee voter. (SEA 15 §§ 11 and 35; Effective date: July 1, 2005; Citations affected; IC 3-11-10-2 and IC 3-14-3-16)

Absentee Ballots and Provisional Ballots

The provisional ballot laws are amended to include cross-references to absentee ballots that must be treated as provisional ballots under SECTION 14. (SEA 15 §§ 15 through 17; Effective date: July 1, 2005; Citations affected; 3-11.7-5-2, 3-11.7-5-2.5, and 3-11.7-5-3)

Absentee Ballot Applications; Special Marion County Deadlines Repealed

Absentee ballot applications from certain Marion County voters are subject to the same absentee ballot application deadlines that apply to applications from these types of voters in all other counties in the state. The same deadlines now apply throughout the state for applications submitted by confined voters, or persons caring for a confined voter, or who mail, fax, or hand-deliver their absentee ballot applications. The deadline that applies to an absentee ballot application sent by fax by a voter requesting a visit from traveling board has been clarified and is the same in all Indiana counties. (SEA 15 § 3; Effective date: July 1, 2005; Citations affected; IC 3-11-4-3)

Absentee Ballot Application Forms; Approval by Indiana Election Commission

The Indiana Election Commission must prescribe a revised absentee ballot application form that would conform with the requirements of SEA 15 no later than September 1, 2005.

Former versions of the absentee ballot application may not be used or accepted by a county election board (except for previous forms prescribed for the use of military and overseas voters). (SEA 15 § 42; Effective date: July 1, 2005; Citations affected: Noncode)

PROVISIONAL BALLOTS

Deadline to Complete Counting Provisional Ballots

The deadline for the county election board to finish counting provisional ballots has been extended from noon the first Monday following the election to noon on the **second** Monday following the election. (HEA 1407 § 56; Effective date: July 1, 2005; Citations affected: 3-11.7-5-1)

Standard for Counting Provisional Ballots

The county election board shall count a provisional ballot if the provisional ballot: (1) has been marked and cast by a voter in compliance with the election code; and (2) would not otherwise be counted solely because of an act or a failure to act of an election officer unless evidence of fraud, tampering, or misconduct affecting the integrity of the ballot is demonstrated. The mere act or failure to act by the election official is not by itself evidence of this fraud, tampering, or misconduct.

However, a county election board, by a majority vote of the members, may determine that there is a reason not to count such a provisional ballot, and if the board makes this determination, the provisional ballot may not be counted. (HEA 1407 § 99; Effective date: July 1, 2005; Citations affected: 3-11.7-5-1.5 [new])

MILITARY AND OVERSEAS VOTERS

Federal Combined Registration/Absentee Ballot Application May be Received by FAX

An absent uniformed services voter or overseas voter may submit a combined voter registration/absentee ballot application on Federal Form 76-A. This faxed form may then be processed as a voter registration application despite the general rule under the law that a voter registration application must contain an original signature, and not be faxed. (SEA 419 § 1; Effective date: Upon passage; Citations affected: 3-7-32-4)

Electronic Transmission of Ballot

An absentee ballot may be sent by electronic transmission (email) to an absent uniform service voter or an overseas voter. However, the emailing of an absentee ballot is only authorized under a program authorized and administered by the Federal Voting Assistance Program of the U.S. Department of Defense and only where the electronic mail message transmitting the voted ballot includes an *optically scanned image of the voter's signature* on the affidavit waiving the voter's right to a secret ballot. (SEA 419 § 2; Effective date: July 1, 2005; Citations affected: 3-11-4-6)

Conforming amendments were also made regarding processing a ballot received by electronic transmission, including: 1) duties of clerk or clerk's designee when receiving a ballot by electronic transmission (including marking the ballot "ABS ballot received by Fax or Electronic Mail."); 2) comparison of signatures to be made between signature on the absentee ballot application and the affidavit transmitted with the voter's ballot; 3) the deadline for receiving electronically submitted absentee ballots (same as other absentee ballots); 4) an inspector or absentee ballot counter not rejecting a ballot because ballot has been opened and resealed; and 5) permitting a remake team to remake a ballot received by email. (SEA 419 §§ 7, 8, 10, 11, 12, 13, and 16; Effective date: July 1, 2005; Citations affected: 3-11-10-1, 3-11-10-4, 3-11-10-14, 3-11-10-17, 3-11.5-4-10, 3-11.5-4-13, and 3-12-3-5)

“Federal Only” Ballot Procedures for Certain Overseas Voters

The “federal only” ballot law is clarified to distinguish between an overseas voter who is entitled to receive the “federal only ballot” and an overseas voter who is entitled to receive the complete official ballot, listing all offices.

A voter who is qualified to vote by virtue of the voter’s former residence in a county in Indiana before leaving the United States but who is no longer a resident of a precinct in the county receives the “federal only” ballot. For voter registration record and ballot variation purposes, this voter is placed in the same precinct as the precinct where the voter registration office is located in the county where the person resided before leaving the United States.

An overseas voter who is qualified to vote in the county, and who claims legal residence within a precinct in the county (despite their presence overseas) receives the complete official ballot, listing all offices.

(SEA 419 § 3; Effective date: July 1, 2005; Citations affected: 3-11-4-8)

Circuit Court Clerk Tracking Requirements for Military and Overseas Absentee Ballots

The circuit court clerk must keep the following tracking information as part of the county’s absentee ballot record:

- 1) The combined total number of absentee ballots sent by the county to absent uniformed services voters and overseas voters.
- 2) The total number of absentee ballots returned by voters described in paragraph 1 received in time to be counted.
- 3) The total number of absentee ballots described in paragraph 1 that were counted in whole or in part.

This information will be included in reports submitted to the Election Division so that the Election Division may aggregate and report this information to the federal government as required by HAVA. (SEA 419 § 6; Effective date: July 1, 2005; Citations affected: 3-11-4-17)

Counting Special Military/Overseas Voter Write-in Ballots

The following changes have been made in Indiana law to conform to a 2004 federal law regarding the counting of special write-in absentee ballots:

- (1) a special write-in ballot of an *absent uniform service voter* submitted from *within the U.S.* (meaning not sent from overseas) will be counted if otherwise valid (former statute provided that a special write-in ballot submitted by an absent uniform service voter from within the U.S. was invalid);
- (2) a special write-in ballot of an *overseas voter* submitted *within the U.S.* (for example, mailed from Nebraska) will not be counted.
- (3) a special write-in ballot will be counted even though an *application* for a regular absentee ballot was not received by 30 days before an election.

(SEA 419 § 15; Effective date: May 11, 2005; Citations affected: 3-12-2-7.5)

POLLING PLACES AND POLL WORKERS

Nonpartisan 16 and 17 Year Old Poll Workers

Current law permits the county election board, in certain circumstances, to use 16 and 17 year olds to serve as nonpartisan poll workers in accordance with guidelines established under the Help America Vote Act. The Secretary of State and Election Division may establish interim guidelines for 16 and 17 year olds to serve as nonpartisan poll workers. These guidelines expire when the federal Help America Vote Foundation guidelines for nonpartisan service become effective. (SEA 341 § 90; Effective date: May 12, 2005; Citations affected: Noncode)

16 or 17 Year Old Poll Workers Exempt from Certain Child Labor Laws

16 and 17 year old poll workers appointed by the county election board do not have to obtain an employment certificate and are not subject to the limitations on time and duration of employment under Indiana's child labor law. (SEA 341 § 15; Effective date: July 1, 2005; Citations affected: 3-6-6-39)

Imposing Fine on Precinct Election Officer

If the county election board determines, by unanimous vote of the entire membership of the board, that an individual serving as a precinct election officer has negligently or recklessly failed to perform a duty required by the election code, the board shall assess the individual a civil penalty of not more than five hundred dollars (\$500). A civil penalty assessed by the board may be deducted from any compensation that the individual may otherwise be entitled to under IC 3-6-6. (SEA 341 § 8; Effective date: July 1, 2005; Citations affected: 3-6-5-35)

Precinct Election Officer Not Holder of Lucrative Office

For purposes of Article 2, Section 9 of the constitution of the State of Indiana, the position of precinct election officer is not considered a "lucrative office". (SEA 341 § 14; Effective date: July 1, 2005; Citations affected: 3-6-6-37)

County Election Board to Keep Training Records

The county election board must maintain a record documenting the attendance of each person attending the training and educational meeting conducted by the board for its precinct election officers. (SEA 341 § 16; Effective date: July 1, 2005; Citations affected: 3-6-6-40)

Certified Election Worker Program

The Indiana Secretary of State shall administer a certified election worker program which must consist of courses that cover several aspects of election administration, including the duties of precinct election officers, the laws and procedures governing the operation of voting systems, and effective communications and problem solving techniques. The certification expires January 1 of the fourth year following certification but the Secretary may establish and administer requirements for the renewal of certification. (SEA 341 § 17; Effective date: July 1, 2005; Citations affected: 3-6-6.5 [new chapter])

Party Challengers Permitted in the Poll

A challenger, like a pollbook holder, may enter into the polling place at least 30 minutes before the polls open and remain there throughout the day. The challenger may enter, leave and reenter the polls on election day. The challenger is subject to the orders of the precinct election board while in the polls and must produce the challenger's

identification card if requested by a member of the precinct election board. (SEA 341 §§ 19, 54, 55, and 91; Effective date: July 1, 2005; Citations affected: 3-6-7-5, 3-11-8-15, 3-11-8-16, and 3-6-7-2 [repealed May 12, 2005])

Secretary of State Permitted in the Poll

The Secretary of State, as chief election officer, may enter the polls on election day, unless the individual serving as Secretary of State is a candidate for nomination or election to an office at the election. (SEA 341 §§ 54; Effective date: July 1, 2005; Citation affected: 3-11-8-15)

Additional Information on Credentials Issued to Pollbook Holders, Challengers, and Watchers

Political parties (and independent candidates and political action committees in some cases) are entitled to appoint pollbook holders, challengers and watchers. The county chairman issues identification cards, also called “credentials” to each pollbook holder and challenger. The identification cards issued to pollbook holders and challengers must clearly state the following:

- 1) The status of the individual as an appointed challenger or pollbook holder.
- 2) The name of the individual serving as a challenger or pollbook holder.
- 3) The name of the person who appointed the individual as a challenger or pollbook holder, and whether the person is a political party, an independent candidate, or a county election board.
- 4) If the challenger or pollbook holder has been appointed by a political party, the name of the political party.

Identification cards issued to watchers (except for certain primary watchers described below) must clearly state the following:

- 1) The status of the individual as an appointed watcher.
- 2) The name of the individual serving as a watcher.
- 3) The name of the person who appointed the individual as a watcher.
- 4) If the individual has been appointed as a watcher by a political party, the name of the political party.

Under current law 26% of the candidates of a political party in a primary may file a written request with the county election board for the appointment of watchers. A candidate, or a group of candidates, for school board are likewise entitled to watchers and may file a written request for the appointment of watchers. The written request must designate an attorney-in-fact to act on behalf of the candidates and the attorney-in-fact may certify watchers, in writing, to the circuit court clerk. The circuit court clerk must issue certificates to the watchers identified by the attorney-in-fact. These types of certificates must state:

- 1) The name of the attorney-in-fact who certified the watcher to the clerk.
- 2) The status of the individual as a watcher appointed under this chapter.
- 3) The name of the individual serving as a watcher.

- 4) If the watcher is acting on behalf of a school board candidate, or a group of political party candidates, the name of the school board candidate or political party whose candidates have petitioned for these watchers.

Under current law, the media is also entitled to the appointment of watchers. The county election board issues identification cards to media watchers. Media watcher identification cards must state:

- 1) The status of the individual as an appointed watcher.
- 2) The name of the individual serving as a watcher.
- 3) The name of the person who appointed the individual as a watcher.

(SEA 341 § 18, 20, 21, and 22; Effective date: July 1, 2005; Citations affected: 3-6-7-1, 3-6-8-3, 3-6-9-5, and 3-6-10-5)

Alternative Methods to Designate Chute

The chute at a polling place may be designated in a manner other than by a railing, rope or wire. The county executive shall provide the material necessary to designate the chute. (HEA 1407 §§ 65, 75, and 81; Effective date: July 1, 2005, Citations affected: 3-11-8-7, 3-11-11-12, and 3-11-13-27)

Accessible Polling Place Locations; Authority to Designate Location 5 Miles Outside Precinct

If an accessible facility is not available within a precinct, then the polling place for the precinct may be located within an accessible facility in the county within 5 miles from the closest boundary of the precinct. (Current law requires that the facility outside the precinct be a “public building” and permits the county to locate the polls within 1 mile from the closest boundary of the precinct.) The requirement that this location outside the precinct be a “public building” has been repealed.

If the most convenient accessible facility is not available within a precinct or the county, the county election board may, by unanimous vote, locate the polls at the “most convenient accessible facility” located in an adjoining county, with the unanimous approval of the other county’s election board. (SEA 341 § 52; Effective date: July 1, 2005; Citations affected: 3-11-8-3)

PRECINCTS

Approval of Precincts

The Election Division may approve a proposed precinct establishment order submitted to the Election Division by a county if no voter of the county files an objection to the proposed order. Approval of the proposed precinct boundary change by the Indiana Election Commission is not required in this situation.

After the Election Division has approved a proposed precinct establishment order, the Election Division shall notify the county executive of the approval. The county executive must publish a legal notice regarding the order. A voter of the county may then file an objection to the proposed precinct establishment order with the Election Division in the form of a sworn statement within 10 days after the published notice. If an objection is filed, then the proposed establishment order is referred to the Indiana Election Commission for determination. (HEA 1407 §§ 36, 37, 38, and 39; Effective date: July 1, 2005; Citations affected: 3-11-1.5-18, 3-11-1.5-22, 3-11-1.5-27, and 3-11-1.5-31)

LOCAL ELECTION ADMINISTRATION

Filing with a County Election Board

Except as otherwise expressly authorized or required in the election code, a filing by a person with a county election board or a town election board may not be made by fax or electronic mail. (SEA 341 § 1, Effective date: July 1, 2005; Citations affected: 3-5-4-1 [new])

Certification of Election Results

The date that local election officials are required to certify election results to the Election Division, and furnish a copy to the county chairman of each political party, has been extended from noon the first Monday following the election to noon the *second Monday following the election*. (HEA 1407 § 14, 15, 18, 33, 103, 110, 111, 112, and 113; Effective date: July 1, 2005; Citations affected: 3-8-3-9, 3-8-4-5, 3-8-7-5, 3-10-1-33, 3-12-4-12, 3-12-5-1, 3-12-5-5, 3-12-5-6, and 3-12-5-11)

Appeal from County Election Board Decision

Except as expressly provided by statute, an appeal from a decision of a county election board (or a combined board of registration and elections) must be filed with the circuit court no later than 30 days after the board makes the decision subject to the appeal. (SEA 341 § 7, 11 and 13; Effective date: July 1, 2005; Citations affected: 3-6-5-34 [new], 3-6-5.4-4.5 [new], and 3-6-5.4-10 [new])

Presidential Primary Results Electronic Certification to State

A circuit court clerk may certify the official results of a presidential primary to the Election Division by using the statewide voter registration system. (SEA 341 § 26, Effective date: July 1, 2005; Citations affected: 3-8-3-9)

Providing Party Symbols to County Election Boards

The former statute that required a state party to file copies of the party symbol with the Election Division before each election for purposes of including the party symbol on the ballot is repealed.

The party symbol that a state party has on file with the Election Division remains the party's symbol until the device is changed according to party rules and a statement identifying the new device is filed with the Election Division.

The Election Division must provide each county election board with camera-ready copies of ballot symbols on file with the Election Division before a general or municipal election. However, if a political party is running candidates for local offices only, then the political party must file its party symbol with the county election board before noon August 20. (SEA 341 § 31, Effective date: July 1, 2005; Citations affected: 3-8-7-11)

Ballot Printing Requirements; Primary and General Elections

A county election board using a ballot card voting system in a precinct for a primary election must print at least the number of primary ballots for a political party equal to the number of votes cast for the candidate of that party who received the greatest number of votes in that precinct at the last general election.

For a precinct that uses a computerized electronic voting system in a primary, the board must determine and furnish the precinct with the number of ballots required for emergency purposes only.

A county election board using a ballot card voting system in a precinct for a general election must provide the precinct with at least the number of ballots equal to 100% of the voters on the precinct poll list.

For a precinct that uses a computerized electronic voting system in a general election, the county election board must provide the number of ballots required for emergency purposes only. (SEA 341 §§ 34 and 51, Effective date: July 1, 2005; Citations affected: 3-10-1-12 and 3-11-3-11)

Updating Voter Registration Records

Current law permits the county voter registration office to open sealed election records containing poll lists to document that a voter has complied with federal and state law to provide identification documentation for voters that had registered by mail and had not previously voted *in the county*. An amendment to statute recognizes that this information will continue to be collected; however, the requirement will be different after the implementation of the Statewide Voter Registration System. After implementation of the Statewide Voter Registration System, identification documentation will be required from voters who register by mail and have not previously voted within the *State of Indiana*. (SEA 341 § 35; Effective date: July 1, 2005; Citations affected: 3-10-1-31.1)

Precincts using the same Polling Place; Separate Precinct Vote Totals Required

A county may assign voters from two precincts to the same polling place, with both precincts under the administration of one precinct election board.

When the county locates more than one precinct at the same polling place location, the precinct election board must keep the ballots voted in each precinct separate from the other precinct, so that a vote total for each candidate and on each public question can be determined for each precinct. (SEA 341 §§ 45, 46, 53, 56, 57, and 58; Effective date: July 1, 2005; Citations affected: 3-10-7-22, 3-10-8-6, 3-11-8-4.3, 3-12-2-1, 3-12-3-11, and 3-12-3.5-3)

Processing and Forwarding Grand Jury Election Affidavits

Current law requires the grand jury to receive any affidavit concerning illegal voting in a precinct. (For example, a challenge that the voter does not reside in the precinct.)

However, challenge affidavits concerning a voter who was unable to produce identification documentation required under the Help America Vote Act and who complies with the requirement before the closing of the polls on election day are not forwarded to the grand jury. The other affidavits concerning illegal voting are delivered by the inspector to the county election board. The county election board then forwards the affidavits to the prosecuting attorney.

The county election board shall unseal the bag returned by the inspector with the affidavits, copy the affidavits, place the original affidavits back in the bag, reseal the bag, and forward the copies of the affidavits to the secretary of state.

The prosecuting attorney must ensure that the grand jury notifies the state NVRA official (the Co-Directors of the Election Division) if a violation of National Voter Registration Act appears to have occurred. (SEA 341 §§ 66 and 67; Effective date: July 1, 2005; Citations affected: 3-14-5-1 and 3-14-5-2)

TIE VOTES, RECOUNTS AND CONTESTS

Deadline for Filing Recount or Contest

The deadlines for filing a recount and/or a contest have been extended to noon 14 days after election day for candidates and noon 17 days after election day for county and state political party chairmen under certain circumstances where they have a right to file a recount and/or contest. (HEA 1407 §§ 114, 119, and 122 Effective date: July 1, 2005; Citations affected: 3-12-6-2, 3-12-8-5, and 3-12-11-2)

Filing with the State Recount Commission

Except as otherwise expressly authorized or required in the election code, a filing by a person with the Commission may not be made by fax or electronic mail. (SEA 341 § 1, Effective date: July 1, 2005); Citations affected: 3-5-4-1 [new])

Service Upon Counsel

Personal service upon an individual in a state recount or contest proceeding is not required if the individual's attorney has filed an appearance with the Election Division. Instead, service of the recount or contest proceeding shall be delivered to the individual's attorney. (HEA 1407 § 124; Effective date: July 1, 2005; Citations affected: 3-12-11-9)

Amount of Cash Deposit Required in Recount

The provision setting the amount of the per precinct cash deposit for a recount is clarified to indicate that the 1% of the vote difference between the candidates is based on 1 % of the total votes cast *for all candidates involved in the contest*. (HEA 1407 § 125; Effective date: July 1, 2005; Citations affected: 3-12-11-11)

Joint Motion to Dismiss Recount or Contest

When the petitioner and each cross-petitioner or respondent file a joint motion to dismiss a recount or contest, then the Indiana Recount Commission shall rule on the motion to dismiss before ordering or continuing with a recount or contest. (HEA 1407 § 127; Effective date: July 1, 2005; Citations affected: 3-12-11-11)

Recount Limited to Precincts Within Election District

Recounts and contests may be conducted and votes counted for an office only in a precinct within the election district for the office which may, or may not, include all the precincts in a county. (HEA 1407 §§ 127 and 128; Effective date: July 1, 2005; Citations affected: 3-12-11-13 and 3-12-11-14)

Materials Subject to Impoundment

The election equipment and material subject to impoundment includes “any election records or equipment related to a recount or contest.” (HEA 1407 § 129; Effective date: July 1, 2005; Citations affected: 3-12-11-16)

Recounts; Deadline and Standards

A court, or the Indiana Recount Commission, may extend the deadline for completing a recount or a contest to a specific date if the court or Commission finds good cause to do so. Current law regarding when the Indiana Recount Commission may not count all of the ballots in a precinct is clarified to indicate that the rule applies to all precincts,

regardless of the type of voting system that was used in the precinct. (SEA 15 §§ 18 through 20; Effective date: July 1, 2005; Citations affected: 3-12-6-21.9, 3-12-11-17.7, and 3-12-11-21)

Tie votes in Circuit and School Board Elections

Current law requiring that a special election be held to break a tie vote that occurs in an election for a circuit office, or for certain school board offices, is repealed.

The circuit court clerk shall notify the county council if a tie vote occurs in a circuit office (or, in a circuit with more than one county, each county council within the circuit). The circuit court clerk shall notify the school board if a tie vote occurs in a school board election.

The county council (or a joint meeting of all county councils of counties located in a circuit) will break a tie vote for a circuit office. If a tie vote occurs for the office of school board then the school board will break a tie vote by selecting one of the candidates who received the tie vote. The school board shall make the selection to break the tie no later than the date before the term for the school board office is scheduled to begin.

If a tie vote occurs among the county council when attempting to break the tie vote for a circuit office, then the county commissioners shall break a tie vote for a circuit office. If a tie vote occurs among the school board when attempting to break the tie vote for school board office, then the judge of the circuit court will break a tie vote for a school board office. (SEA 15 §§ 59 through 61, 75, 77, and 78; Effective date: July 1, 2005; Citations affected: 3-12-9-1, 3-12-9-3, 3-12-9-4, 20-4-1-26.5, 20-4-8-8, and 20-23-4-30)

CITY AND TOWN ELECTIONS

Small Town Political Party Conventions

A county chairman may determine that an emergency requires the rescheduling of a small town political party convention. If the county chairman reschedules the convention due to an emergency, the chairman must promptly file a notice with the county election board and in the town clerk-treasurer's office regarding the date and location of the rescheduled meeting.

After the convention has begun, it may be recessed and reconvened on another date upon a motion adopted by a majority of the eligible voters at the convention, subject to the convention reconvening no later than the deadline set by state law to conduct the convention. (SEA 341 §§ 28 and 29; Effective date: July 1, 2005; Citations affected: 3-8-5-10 and 3-8-5-12)

Changing a Town into a City

Current law regarding changing a town to a city is repealed and relocated to a new chapter. The statute describes a procedure for a town to submit a public question to its voters on whether to change the town into a city.

The town legislative body may provide by ordinance for the details of the conversion of the town into a city if the voters of the town approve the public question. The ordinance must be filed with the circuit court clerk and must include the following details:

- 1) A division of the town into city legislative body districts as provided in the applicable provisions of IC 36-4-6.

- 2) Provisions for the election of the mayor, members of the common council, and city clerk or city clerk-treasurer.
- 3) The date of the first election of the city officers which may be held only on the date of a general election or a municipal election.
- 4) The term of office of each city officer elected at the first election of city officers.
- 5) Any other details the town legislative body considers useful in providing for the transition of the town into a city.

Candidates for election to the city offices shall be nominated: a) at the corresponding primary election during a general election year or a municipal election year; or b) as otherwise provided in the Indiana election code.

A town becomes a city on January 1 after the first election of city officers. The term of office of the city officers begins on January 1 after the first election of city officers and may not extend after December 31 of the next municipal election year. The ordinance may provide for a shorter term of office for specified members of the city legislative body to stagger terms as permitted under IC 3 and IC 36-4-6 if a general election will occur before the next municipal election after the first election of city officers. Then, after the first municipal election after the first election of city officers, the term of office of each city officer is four (4) years.

A town that began conversion into a city under former IC 36-4-1, as in effect before January 1, 2005, may complete its conversion into a city under this new law. The town legislative body must adopt an ordinance providing for the transition from governance as a town to governance as a city. The ordinance must be filed with the circuit court clerk and include the following details:

- 1) A division of the town into city legislative body districts as provided in the applicable provisions of IC 36-4-6.
- 2) Provisions for the election of the mayor, members of the common council and city clerk or city clerk-treasurer.
- 3) That the first election of the city officers will be held in a special election on November 8, 2005.
- 4) The term of office of each city officer elected at the special election must be set forth specifically in statute.
- 5) Any other details the town legislative body considers useful in providing for the transition of the town into a city.

The candidates for a city office elected under this statute shall be nominated as follows: a) Major party candidates shall be nominated by filing a declaration of candidacy not earlier than July 27, 2005, and not later than August 26, 2005; b) Minor party and independent candidates shall be nominated by filing a petition of nomination not earlier than July 27, 2005, and not later than August 26, 2005; c) Write-in candidates shall file a declaration of intent to be a write-in candidate not earlier than July 27, 2005, and not later than August 26, 2005.

(SEA 512 §§ 1, 2, 8, 9, and 10; Effective date: April 28, 2005; Citations affected: IC 36-4-1-9, 36-4-1.5 [new], 36-4-1-3 [repealed], 36-4-1-4 [repealed], 36-4-1-4.1 [repealed], 36-4-1-5 [repealed], and noncode)

Nonresident Voters in Municipal Elections

Current law (IC 3-10-12-3) contains two conflicting versions of the same Indiana Code section, both adopted by the General Assembly in 1999.

One version permitted a voter who moves outside of a city or town during the final 30 days before a municipal election to return to that city or town to vote, while the other version prohibited the voter from returning to the municipality where the voter formerly resided.

The two conflicting versions have both been repealed, and a new statute adopted to resolve the conflict. Under the new law, a voter who resided in a city or town but who moves the voter's residence to outside of the town before a municipal election may not return to the voter's precinct of former residence to vote in the municipal election.

The statute is also clarified to indicate that fail-safe affidavits used in an election shall be returned by the precinct inspector to the county election board after the polls are closed. The county election board shall then deliver the affidavits to the county voter registration office. (SEA 341 §§ 47 through 49, and 91; Effective date: Upon passage; Citations affected: 3-10-12-3.4 [new], 3-10-12-3.5, 3-10-12-4, and 3-10-12-3 [repealed upon passage])

Minor Political Parties; Independent Candidates; Political Party Symbols

Current law provides that if a political party or group of minor party petitioners do not provide the name or symbol of their party in the certification or on their nominating petition that the county election board may print ballots with some "suitable" name and symbol for the party. This law is repealed so that the county election board is not longer required to choose a suitable name or symbol.

If more than one party selects the same party symbol for the ballot, then the party that filed the symbol first under the current state law (IC 3-8-7-11) concerning party symbol is entitled to have that symbol used on the ballot. (SEA 341 § 50; Effective date: July 1, 2005; Citations affected: 3-11-2-5)

Uniform Terms for County Offices

In the 2004 election the voters of the state approved a public question that called for an amendment to Article 6, Section 2 of the Constitution of the State of Indiana to allow the General Assembly to establish a uniform date for the beginning of the terms of the county constitutional offices of clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor.

Since that constitutional amendment was approved, the General Assembly adopted a new law that changes the time when county elected officials of certain counties begin their terms of office to eliminate a year or more delay between the date of the election for the office and the date the individual takes office.

This new law does not shorten the existing term of any previously elected official. However, in some instances, a person elected to office in a future election may serve less than a full four-year term of office. An individual who has been elected to a county office at least two times but who does not serve eight full years because the individual's term of office has been cut short to make the terms of office uniform is entitled to vested status in the public employees' retirement fund and maintains other benefits to which the individual would otherwise be entitled only if the individual were serving eight years in office. (SEA 308 §§ 1, 2, 14, and 19 through 93; Effective date: July 1, 2005; Citations affected: 5-10.2-1-8, 5-10.2-4-1.7, 36-1-8-15 [new], and noncode)

Legislation Affecting Courts or Creating New Courts

2005 legislation makes the following changes concerning courts:

- 1) creates one new superior court in Dearborn, DeKalb, Hamilton, Howard and Montgomery Counties. The new superior courts in Dearborn, DeKalb and Montgomery County are created on January 1, 2006. The new superior court in Howard County is created on January 6, 2006. The new superior court in Hamilton County is created on January 1, 2007;
- 2) creates two new superior courts in Hendricks County on January 1, 2007;
- 3) adds an eighth judge to the Monroe circuit court on January 1, 2006;
- 4) adds a ninth judge to the Monroe circuit court on January 1, 2008;
- 5) abolishes the DeKalb County small claims referee;
- 6) makes the superior courts in Howard County standard superior courts; and
- 7) adds a fifth judge to Vigo superior court effective January 1, 2006 with initial appointment by the governor to serve from January 1, 2006 through December 31, 2006. The initial election of the judge of the Vigo superior court added is the general election in November 2006.

(HEA 1141 §§ 1 through 34; Effective date: July 1, 2005 unless otherwise indicated; Citations affected: IC 33-30-2-1 [effective January 1, 2006]; 33-33-15-2, 33-33-15-3, 33-33-15-4, 33-33-15-5, 33-33-15-6, 33-33-17-2, 33-33-17-3, 33-33-17-4, 33-33-17-6, 33-33-17-7, 33-33-29-2, 33-33-29-8, 33-33-32-2, 33-33-32-5, 33-33-34-3, 33-33-34-6, 33-33-34-7, 33-33-34-19 [new], 33-33-53-1, 33-33-54-2, 33-33-54-3, 33-33-54-4, 33-33-54-6 [new], 33-33-17-5 [repealed], 33-33-34-1 [repealed], 33-33-34-4 [repealed], 33-33-34-5 [repealed], 33-33-34-8 [repealed], 33-33-34-9 [repealed], 33-33-34-10 [repealed], 33-33-34-11 [repealed], 33-33-34-15 [repealed], 33-33-34-16 [repealed], 33-33-34-17 [repealed], 33-33-34.3 [repealed], 33-33-54-5 [repealed effective January 1, 2006], and Noncode)

(HEA 1001 §§ 223 and 260; Effective date: July 1, 2005; 33-33-84-3 and noncode)

STATE ELECTION ADMINISTRATION

Filing with the Indiana Election Division or Indiana Election Commission

New statute provides that, except as otherwise expressly authorized or required in the election code, a filing by a person with the Indiana Election Commission or the Election Division may not be made by fax or electronic mail. (SEA 341 § 1, Effective date: July 1, 2005); Citations affected: 3-5-4-1 [new])

Repeal of Obsolete References to Election Division Printing and Distributing Paper Ballots

As a result of earlier legislation, the Election Division no longer prints or distributes paper ballots for use in general elections. Obsolete references to these ballots are repealed. However, the Election Division will continue to prepare and distribute the special write-in ballot for absent uniformed service voters and overseas voters.

(HEA 1407, §§ 8, 9, 42, and 43; Effective dates: July 1, 2005; Citations affected: IC 3-6-4.2-12, 3-6-5-14, 3-11-3-3, and 3-11-3-12)

(SEA 341 §§ 51, 56 and 91, Effective date: July 1, 2005; Citations affected: 3-11-3-11, 3-12-2-1, 3-11.5-5-4 [repealed May 12, 2005] and 3-11.7-5-6 [repealed May 12, 2005])

(SEA 419 §§ 4, 5, 9, 14 and 15; Effective date: July 1, 2005; Citations affected: 3-11-4-12, 3-11-4-13, 3-11-10-12, 3-11.5-5-14, and 3-12-2-7.5)

Certification of Election Results

The deadline for the Election Division to tabulate certain votes certified to the Election Division by county election boards is moved from the second Friday after the election to the third Friday after the election. (The deadline for a county election board to certify election results to the Election Division is extended until noon the second Monday following the election.) (HEA 1407 § 110; Effective date: July 1, 2005; Citations affected: 3-12-5-1)

ELECTION LAW CRIMES

Conspiracy for Illegal Registration or Voting; Payments for Absentee Applications, Registering, or Voting

Specifies that the following are Class D felonies:

- 1) Conspiring with a person to encourage an individual to submit a false registration application or to vote illegally.
- 2) Paying or accepting payment for applying for or casting an absentee ballot.
- 3) Paying or accepting payment for registering to vote or voting.

An obsolete provision applicable under the former deputy registrar system (repealed in 1995) concerning writing a voter's name on a registration affidavit without being personally acquainted with the voter is repealed.

(SEA 15 § 21; Effective date: July 1, 2005; Citation affected: IC 3-14-2-1)

Absentee Ballot Application Crimes

Specifies that it is a Class D Felony to:

- 1) solicit a person known to be ineligible to vote to complete or submit an absentee ballot application;
- 2) sign another person's name to an absentee ballot application that contains a false statement, or
- 3) sign another person's name to an absentee ballot application without writing on it the person's own name and address as an attesting witness.

A person who recklessly destroys or fails to deliver a properly executed absentee ballot application after the application is executed by another person commits a Class A misdemeanor. (SEA 15 § 22 through 24; Effective date: July 1, 2005; Citation affected: 3-14-2-2.5; 3-14-2-3; 3-14-2-5)

Soliciting Voters Residing Outside of Precinct to Vote In Precinct

Current law is expanded to provide that it is a Class D felony to hire or solicit a person to go into a precinct for the purpose of voting when the person hired or solicited is not a voter of the precinct. (SEA 15, § 25; Effective date: July 1, 2005; Citation affected: 3-14-2-13)

Repeal of Obsolete Penalties Concerning Improper Delivery of Paper Ballots

Current law that makes it a crime for a county election board member to deliver a ballot to a person except as provided by law, is expanded to include employees or agents of a county election board. Since the Election Division no longer prints or delivers ballots, these provisions are repealed as obsolete. (SEA 15 § 26; Effective date: July 1, 2005; Citation affected: 3-14-2-15)

Improper Delivery of Absentee Ballots

Current law against receiving a voted absentee ballot from a voter is amended to specify that the statute does not prohibit an employee of the US Postal Service or a bonded courier company employee from receiving a voted absentee ballot envelope when delivering the envelope containing the ballot to the county election board as permitted by statute.

It is a Class D felony to possess an unmarked absentee ballot unless the person is otherwise authorized to possess the ballot according to state law. (For example, a ballot printer or postal employee when delivering an unvoted ballot from the county election board to the voter.) (SEA 15 § 27; Effective date: July 1, 2005; Citation affected: 3-14-2-16)

Tampering with Ballots and Voting Systems

Current laws prohibiting violating the secrecy of the ballot, or tampering with ballots and voting systems apply to all types of voting systems (not only “lever” voting machines, as specified under current law). (SEA 15 § 28 through 31 and 34; Effective date: July 1, 2005; Citations affected: 3-14-2-18, 3-14-2-24, 3-14-2-26, 3-14-2-29, and 3-14-3-7)

Procuring False Registrations and Tabulating False Ballots

It is a Class D felony to: (1) *procure or submit* voter registration applications known to be materially false or fraudulent; or (2) *procure, cast, or tabulate* ballots known to be materially false or fraudulent. (SEA 15 § 32; Effective date: July 1, 2005; Citations affected: 3-14-3-1.1 [new])

Injuring Election Officers and Voters

It is a Class D felony to knowingly injure an election officer or a voter in the exercise of the election officer’s or voter’s rights or duties or because the officer or voter has exercised the officer’s or voter’s rights or duties. The statute also includes a technical amendment regarding the definition of “chute”. (SEA 15 § 33; Effective date: July 1, 2005; Citations affected: 3-14-3-4)

Electioneering In Presence of Person With Absentee Ballot

The electioneering law now includes a Class A misdemeanor penalty for electioneering in the presence of a voter whom the person knows to possess an absentee ballot. However, the person’s spouse, the guardian of an incapacitated person, or a member of the person’s household is not prohibited from engaging in this type of electioneering. (SEA 15 § 35; Effective date: July 1, 2005; Citations affected: 3-14-3-16)

Intimidation of Candidates and Voters

The law prohibiting the intimidation of candidates and voters has expanded to cover additional activity. It is a Class D felony for a person to communicate a threat to commit a forcible felony (as defined under the general definition of “intimidation” in the criminal code IC 35-41-1-11) with the intent that the voter or candidate:

- 1) engage in conduct against the voter's or candidate's will; or
- 2) be placed in fear of retaliation for a prior lawful act as a voter or candidate.

(SEA 15, § 36; Effective date: July 1, 2005; Citations affected: 3-14-3-18)

Absentee Ballots and Applications

The current law against offering or accepting property for voting to include offering or accepting property has been expanded to cover *applying* for an absentee ballot or casting an absentee ballot. (SEA 15 § 37 and 38; Effective date: July 1, 2005; Citations affected: 3-14-3-19 and 3-14-3-20)

Mail Fraud and Voting

It is a Class D felony for an individual to conspire to obtain property the individual would be entitled to receive as compensation for serving as an elected official by securing false or fraudulent absentee ballot applications or voter registration applications and to transport fraudulent voter registration applications or absentee ballot applications by private or commercial carrier operating entirely within Indiana. (SEA 15, § 39; Effective date: July 1, 2005; Citations affected: 3-14-3-20.5 [new])

Intimidation and Coercion Concerning Registration or Voting

It is a Class D felony for a person to intimidate, threaten, or coerce another for:

- 1) voting or attempting to vote;
- 2) urging or aiding another individual to vote or attempt to vote; or
- 3) exercising any power or duty related to registration or voting.

(SEA 15, § 40; Effective date: July 1, 2005; Citations affected: 3-14-3-21.5 [new])

Definition of "Bribery" Expanded

The definition of "bribery" under Indiana law has been expanded to include the act of offering to, or conferring property on, an individual for voting or not voting in an election or at a party convention. (SEA 15, § 41; Effective date: July 1, 2005; Citations affected: 35-44-1-1)

MISCELLANEOUS TECHNICAL CHANGES

Oath of Governor and Lieutenant Governor; Procedures

The governor and the lieutenant governor are not required to take the oath of office in the presence of both houses of the general assembly. (HEA 1407 § 141; Effective Date: July 1, 2005; Citations affected: 5-4-1-3)

Updates to Election Schedule and Other Dates in Statute

Several laws referring to the schedule for electing officeholders and for conducting elections were updated to refer to the next scheduled election for the office. References to obsolete dates to begin applying a procedure or requirement (such as December 31, 2003) were also repealed.

(SEA 341 §§ 2, 3, 4, 5, 6, 9, 10, 12, 27, 30, 33, 36 through 40, 42, 43, 44, 72, 74, 76, 80, 82, 83, 84, 85, 86, 87, 88, 89, and 91; Effective Date: July 1, 2005 unless otherwise noted; Citations affected: 3-5-4-7, 3-5-4-9, 3-5-8-2, 3-5-8-3, 3-6-5-3, 3-6-5.2-4.5, 3-6-5.2-8, 3-6-5.4-4.5, 3-8-4-3, 3-8-6-5 [May 12, 2005], 3-10-1-4.5, 3-10-2-3, 3-10-2-4, 3-10-2-6, 3-10-2-7, 3-10-2-12, 3-10-6-2, 3-10-6-3, 3-10-6-6, 20-3-21-9, 20-3-22-9, 20-4-3-1, 20-23-13-1, 36-2-2-4, 36-2-3-4, 36-3-4-3, 34-4-6-3, 36-4-6-4, 36-4-6-5, 36-5-2-4.1, 36-6-6-2.5, and 3-6-5.1-1 [repealed May 12, 2005])

(HEA 1407 §§ 66, 69, 70, 72, 74, and 97; Effective date: July 1, 2005; Citations affected: 3-11-8-11, 3-11-10-4.5, 3-11-10-11, 3-11-10-16.5, 3-11-10-35, and 3-11.5-4-12)

(SEA 482 §§ 1, 3 through 7, 14, 19, 21, 22 and 31; Effective date: April 25, 2005; Citations affected: 3-7-13-12, 3-7-22-1, 3-7-22-2, 3-7-22-3, 3-7-22-4, 3-7-22-5, 3-7-29-1, 3-7-34-1, 3-7-34-2, 3-7-34-3, and 3-14-5-3)

(SEA 419 § 9; Effective date: July 1, 2005; Citations affected: 3-11-10-12)

Updates Cross-References to Federal and State Laws

Cross-references in state laws to federal laws have been updated so that Indiana law incorporates the most recent federal legislation. Cross-references to other state laws have been corrected where those references were in error. (SEA 341 §§ 68, 69, and 70; Effective date: July 1, 2005; Citations affected: 9-13-1-4, 12-7-1-3, and 16-18-1-3)

(HEA 1407 §§ 73, 83, and 86; Effective date: July 1, 2005; Citations affected: 3-11-10-28, 3-11-13-28.7, and 3-11-13-33)

(SEA 14 § 9; Effective date: April 22, 2005; Citations affected: 3-10-4-1)

(HEA 1398 §§ 3 and 5; Effective date: April 25, 2005; Citations affected: 3-11-1.5-35; 3-13-2-8)

Removing References to Clerk of Supreme Court as an Elected Office

References to the office of clerk of supreme court were removed from several election statutes since that office is now appointed by the Chief Justice of the Indiana Supreme Court.

(HEA 1398 §§ 2 and 4; Effective date: April 25, 2005; Citations affected: 3-8-1-33 and 3-11-2-12)